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Rammell v. Idaho State Dept. of Agriculture Respondent's Brief Dckt. 34927

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Supreme Court	Court of Appeals
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IN THE SUPREME COURT OF THE STATE OF IDAHO

REX RAMMELL AND LYNDA RAMMELL;
D/B/A ELK COUNTRY TROPHY BULLS,
Appellants,

v.

IDAHO STATE DEPARTMENT OF AGRICULTURE,
Respondent.

RESPONDENT'S BRIEF

Appeal from the District Court of the Seventh Judicial District of the State of Idaho,
in and for Madison County

Honorable Brent J. Moss, District Judge

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STATEMENT OF THE CASE

Domestic cervidae farms and ranches raise elk, reindeer, and fallow deer for meat or to provide private hunting opportunities. Domestic elk are the most common cervids raised in Idaho. Phenotypically, domestic elk are indistinguishable from wild elk. Genetically, however, domestic elk may differ from wild elk. Many domestic elk originate from elk herds in other states, and some domestic elk have been interbred with European red deer to promote growth. Domestic elk also may carry diseases that are transmittable to wild elk. For such reasons Idaho has adopted a regulatory scheme to ensure that domestic elk are strictly separated from wild elk.

In 1994, the Legislature transferred regulation of the domestic cervidae industry from the Idaho Fish and Game Department to the Idaho State Department of Agriculture (ISDA). 1994 Idaho Sess. Laws 151, codified at Idaho Code § 25-3702 (Michie 2000).¹ The ISDA was directed to regulate domestic cervidae in a manner that addressed the “reasonable concerns of the department of fish and game respecting the domestic farming of cervidae.” Idaho Code § 25-3702 (Michie 2000). The ISDA was given the authority to enter domestic cervidae farms “to inspect and examine the same and any animals therein.” Idaho Code § 25-3705 (Michie 2000).

¹ All references to the domestic cervidae laws herein shall be to the 2000 edition of Idaho Code Titles 25-27 (Michie 2000), which contains the statutes applicable to the violations that led to the contested case below. Many of the domestic cervidae statutes have since been amended and redesignated.

The Legislature directed ISDA to “make, promulgate, and enforce general and reasonable rules not inconsistent with law.” Idaho Code § 25-3704 (Michie 2000). Such rules were to accomplish two aims: (1) “the prevention of the introduction or dissemination of diseases among domestic cervidae of this state,” and (2) to “otherwise effectuate enforcement of the provisions of chapters 2, 3, 4, and 6, title 25, Idaho Code, applicable to domestic cervidae.” Idaho Code § 25-3704 (Michie 2000). The referenced chapters included general provisions for the inspection and suppression of diseases among livestock (Chapter 2, Title 25); the maintenance of tuberculosis free areas (Chapter 3, Title 25); compensation for livestock destroyed on account of tuberculosis (Chapter 4, Title 25); and testing and vaccination requirements for the control of brucellosis (Chapter 6, Title 25).

In accordance with the Legislature’s directive, the ISDA promulgated rules that comprehensively regulated domestic cervidae farming. IDAPA 02.04.19.000 *et seq.* (hereinafter “Domestic Cervidae Rules”).² The domestic cervidae rules, in part, required owners to keep an accurate inventory of domestic cervidae, specified perimeter fencing standards, required owners to submit brain samples upon the death of a domestic cervidae to test for chronic wasting disease (CWD), provided for tuberculosis testing, and adopted

² The domestic cervidae rules have since been amended. The 2003 rules, which were in place at the time of the alleged violations, are available at the following website: <http://adm.idaho.gov/adminrules/rules/03codearchives/IDAPA02/0419.pdf>. A copy of the 2003 rules is attached as an appendix to this brief.

standards for the control of brucellosis. *Id.* The rules also required each domestic cervidae herd to be inspected annually by ISDA to verify inventory numbers. Domestic Cervidae Rule 202. To assist in such inventories, domestic cervidae were to be identified by a bangle tag readily readable from a distance. *Id.* If owners chose not to use bangle tags, the rules required the owners to gather and restrain the elk so that they could be identified by reading the identification numbers that were placed on each domestic elk via small ear tag or ear tattoo. *Id.*

Dr. Rex Rammell, who, with his wife Lynda Rammell, operated Elk Country Trophy Bulls, a private elk hunting operation, was aware of, and participated in, the negotiated rule-making sessions that led to the domestic cervidae rules. Ex. 6: AR 66 at 16 (Findings of Fact);³ Ex. 2, pp. 511-14 (contested case hearing transcript).⁴ Dr. Rammell also testified at the 2003 legislative hearings when the rules were reviewed pursuant to Idaho Code § 67-5291, and “again voiced his opposition and objections to the rules.” Ex. 6: AR 66 at 17 (Findings of Fact). Dr. Rammell did not, however, file a petition for judicial review at the time of the rules’ adoption.

Events soon proved that Dr. Rammell had a different strategy for challenging the rules. In December of 2003, ISDA staff contacted the Rammells to make arrangements

³ The administrative record has been filed with this court as Exhibit 6; hereinafter, documents in the administrative record will be referred to as Exhibit 6, followed by the number such document was assigned in the certificate of administrative record (“AR”). For example, the hearing officer’s Findings of Fact and Conclusions of Law would be Ex. 6: AR 66.

⁴ For the Court’s convenience, copies of the relevant portions of the transcript of administrative proceedings are attached hereto as appendices.

for the annual inventory of the Rammells' elk. Dr. Rammell responded in an e-mail that "there would be no mandatory inventory validation, ever again." Ex. 6: AR 75 (copy of e-mail). In a follow-up letter, he stated that he was protesting, *inter alia*, the annual inspection rule, the rule requiring testing for chronic wasting disease ("CWD"), the rule requiring verification of identification tags, the rule requiring submission of inventory records, the rule requiring brain tissue samples to be submitted to ISDA for testing within 24 hours of death, and the annual fee of \$5.00 per head. Ex. 6: AR 76 (letter).

Ultimately, the ISDA was forced to acquire an administrative warrant from the district court for entry onto the Rammells' property and inspection of the herd. Ex. 6: AR 66 at 4. In the company of a Madison County deputy sheriff, ISDA inspectors entered the Rammells' property and documented a number of fencing violations. *Id.* at 5. The inspectors then commenced to inventory the elk. Because the Rammells refused to use bangle tags, the elk had to be gathered and restrained so that the smaller ear tags could be read. *Id.* at 5-6. In order to do so, ISDA staff had to repair a broken fence in the working alley and construct elk boxes. *Id.* at 6. Dr. Rammell refused to cooperate in the inventory and several times threatened ISDA employees. *Id.* at 7. After inventorying the elk herd, and comparing the count to the Rammells' inventory records, ISDA staff concluded that 28 elk were missing, and another 27 elk had no official form of identification. *Id.* at 8.

On June 4, 2004, the ISDA filed a nine-count Administrative Complaint against the Rammells. Ex. 6: AR 1. Count 1 alleged failure to pay the five dollar per head

administrative fee required by Idaho Code § 25-3708. *Id.* at 10. Count 2 alleged that 26 elk calves and one elk cow lacked official identification, a violation of Domestic Cervidae Rule 021. *Id.* Counts 3, 4, 5, and 6 alleged various fencing violations. *Id.* at 10-11. Count 7 alleged that 28 domestic elk were not accounted for, either because they were moved to another facility without submitting the required Intrastate Movement Certificate or because they had died and notice of death was not provided to the ISDA. *Id.* at 11. Count 8 alleged that Dr. Rammell refused to gather and restrain the elk for purposes of inventory, a violation of Domestic Cervidae Rule 202. *Id.* Count 9 alleged that an unknown number of elk were transported from another domestic cervidae farm to the Rammells' facility without submitting Intrastate Movement Certificates, a violation of Domestic Cervidae Rule 250. *Id.* at 12.

Dr. Rammell, representing himself and his wife, did not contest that they had violated the rules, and in fact entered into a Stipulation with the ISDA in which the Rammells admitted: (1) that Dr. Rammell "refused to gather and restrain his elk despite the Amended Administrative Warrant for Entry and Inspection ordering him to do so"; (2) that the Rammells had transported elk without the required Intrastate Movement of Domestic Cervidae certificates; and (3) that 26 of the Rammells' elk calves and one elk cow had no official form of identification. Ex. 6: AR 14 (Stipulation).

In his pleadings and discovery responses, it soon became apparent that Dr. Rammell's strategy was to use the contested case as a vehicle to challenge facially the reasonableness of the domestic cervidae rules. Dr. Rammell intended to demonstrate that

the rules were adopted primarily to prevent chronic wasting disease (“CWD”), which Dr. Rammell asserted was not a threat within Idaho. Ex. 2, pp. 465-469 (contested case hearing transcript). Dr. Rammell intended to present evidence to prove his assertion that the low risk of CWD did not justify the identification and mandatory inventory requirements of the domestic cervidae rules. *See* Ex. 1, p. 19, ll 15-19 (“This case is about the chronic wasting disease program. Does it need to be mandatory or could it be a voluntary program? Is there enough risk that the state can compel or violate a person’s private property rights?”); Ex. 2, p. 469, ll. 14-15 (“the entire argument I have is about CWD”); Ex. 3, p. 635, ll. 19-21 (“[t]he center of my contention with the rules governing domestic cervidae is the rules that deal with the mandatory CWD surveillance program”).

In response, the ISDA filed a motion in limine requesting the hearing officer to exclude any evidence and testimony offered for the purpose of challenging the reasonableness of the domestic cervidae rules and statutes. Ex. 6: AR 34 & 35 (Motion in Limine and Memorandum in Support of Motion in Limine). The motion in limine was argued at the beginning of the contested case hearing. Dr. Rammell argued that:

This whole case is about the statutes and the rules. If the statutes are unconstitutional, then there is no violation. If the rules are unreasonable based on the statute, there are no rules. Therefore my opening statement is that I am not in violation of anything. . . . And my argument is, again, that the rules are unreasonable. And if they are unreasonable, if I can prove that, which is what I intend to do with my evidence and my witnesses, prove that the rules are unreasonable, then I am in violation of nothing.

Ex. 1, p. 16, ll. 13-25; p. 17, l. 1 (hearing transcript).

The hearing officer ruled that she had not been delegated the authority to determine the validity of the Department's rules and that any decision regarding the validity of agency rules would have to be made by the agency head. Ex. 1, p. 32, ll. 1-23. The hearing officer did, however, rule that Dr. Rammell could "make a record for purposes of district court review" and review by the agency head. Ex. 1, p. 29, ll. 1-10.

Dr. Rammell called and examined ISDA employees Dr. Charles Siroky and John Chatburn, (Ex. 2, pp. 448-540; Ex. 3, pp. 560-628), and Dr. Marie Bulgin (Ex. 3, pp. 657-82). Dr. Rammell also called himself as a witness (Ex. 3, pp. 629-53). The hearing officer ruled on the admissibility of all evidence, as provided in IDAPA 02.01.01.400.09 (hereinafter "ISDA Procedural Rules"). Evidence offered by Dr. Rammell in support of his theory that the risk of CWD did not justify the requirements of the domestic cervidae rules was ruled inadmissible because Dr. Rammell had failed to establish the relevancy of CWD to the specific counts alleged against him. *See, e.g.*, Ex. 2, p 462, ll. 14-17; Ex. 2, p. 464, ll. 9-14; Ex. 3, p. 670, ll. 10-14. Dr. Rammell was, however, allowed to make offers of proof, including the following:

I will make an offer of proof that I would have, had I been allowed to argue, that the reason all these rules are in place is because the CWD program [sic]. Every one of these rules has some connection to that program. CWD is the heart and sole of the rules. And it is the reason I protested. It's the reason I have to run my elk through the chute every year. It's the reason my elk get injured. There is other diseases—brucellosis, tuberculosis, other things—but they don't necessarily require a mandatory inventory validation every year. That was all because of CWD.

To not admit CWD into this hearing, or any evidence about it—risks, level of disease, programs—is simply denying my right to an argument.

Ex. 2, p. 465, l. 24 to p. 466, l. 14.

Immediately prior to the hearing, Dr. Rammell also filed a motion to disqualify the hearing officer because she had “no professional knowledge of the workings of animals and their diseases,” and because she had suggested that Dr. Rammell should challenge the domestic cervidae rules by means of a declaratory judgment “rather than proceed with an administrative hearing where evidence could be taken for the record.”

Ex. 6: AR 49 (motion of disqualification). The hearing officer denied the motion.

Following the hearing, the hearing officer issued Findings of Fact, Conclusions of Law, and a Preliminary Order (Ex. 6: AR 66), which found the Rammells in violation of all nine counts in the Administrative Complaint. The Rammells filed a petition with the ISDA agency head for review of the preliminary order. Ex. 6: AR 53. The petition did not set forth any substantive argument as to why the domestic cervidae rules were unreasonable, but was confined to arguing that the hearing officer should have considered the issue.

Upon review of the petition, the ISDA deputy director Michael Everett, acting as the designee of the agency head, issued a final order affirming the preliminary order. Ex. 6: AR 68. The deputy director rejected Dr. Rammell’s argument that the hearing officer should have made a factual determination as to the reasonableness of the rules. In

order to provide guidance for future challenges to agency rules, the deputy director ruled as follows:

Until there is a binding court ruling to the contrary, the issue of consistency of rules with governing statutes or the constitution and the reasonableness of rules under governing statutes is not an evidentiary issue, and no testimony will be taken by the Hearing Officer or by the Director or his designee. Consistency of rules with statute and reasonableness of rules are issues of law, and if they are to be presented in the future in a case in which the Department uses a Hearing Officer, they must be presented to the Director or his designee as a legal argument in a petition for review of a preliminary order or of a recommended order.

Ex. 6: AR 68 at 8 (Final Order). The deputy director affirmed the findings that the Rammells had committed nine violations of the domestic cervidae statutes and rules. *Id.* at 7. For five of the violations, he assessed the maximum penalty of \$5,000 (\$25,000 in total); for the other four violations he assessed a civil penalty of \$1,000 (\$4,000 in total). *Id.* In a supplemental order, he ordered the Rammells to pay ISDA's costs and attorney fees in the amount of \$29,372.96.

Twenty-nine days after entry of the final order, Dr. Rammell filed a petition for judicial review with the district court of the Seventh Judicial District, Madison County. The petition for judicial review was initially dismissed as untimely. *R.*, p. 52. Such dismissal was appealed to this Court, but remanded upon motion of the ISDA when it was determined that the petition for review, while untimely under the terms of Idaho Code § 67-5273(2) (petition for judicial review must be filed within 28 days of final order), was timely under the terms of Idaho Code § 25-3706 (Michie 2007 Supp.)

(providing 30 days to appeal orders finding violation of domestic cervidae statutes). R., p. 66.

Upon remand, the district court proceeded to determine the merits of the petition for judicial review. The district court held that: (1) “ISDA was within its discretion when it prohibited Mr. Rammell from presenting his rule-validity arguments before the hearing officer” (R., p. 158) (Memorandum Decision); (2) given the availability of “multiple forums to challenge the validity of an agency’s rules . . . there is no support for the position that an administrative hearing before a hearing officer is a constitutionally mandated forum” (R., p. 159); (3) the hearing officer was not required to disqualify herself for bias for or lack of expert knowledge (R., p. 160); and (4) ISDA’s award of costs and attorney fees to ISDA was justified since “Mr. Rammell had no basis in fact or law to intentionally defy ISDA’s domestic elk rules and then use the administrative hearing as a forum to challenge the rules’ validity.” R., p. 160. The district court, however, only upheld one-half the award of attorney fees and costs, based on its determination that the hearing went longer than was necessary because the hearing officer permitted Dr. Rammell “to create a useless record.” R., p. 161.

ADDITIONAL ISSUES ON APPEAL

Whether ISDA should be awarded its costs and attorney fees on appeal pursuant to Idaho Code § 12-117.

STANDARD OF REVIEW

A strong presumption of validity favors an agency's actions. *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm'n*, 144 Idaho 23, 26, 156 P.3d 524, 527 (2007). Under the statutory standard of review applicable to contested cases, an agency's order may be set aside only if the agency's findings, conclusions, or decisions: (a) violate constitutional or statutory provisions; (b) exceed the agency's statutory authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence on the record as a whole; or (e) are arbitrary, capricious, or an abuse of discretion. Idaho Code § 67-5279(3) (Michie 2006).

On questions of law concerning an agency's interpretation of the statute that it administers, the Court defers generally to the agency's interpretation "so long as that interpretation is reasonable and not contrary to the express language of the statute." *Sons & Daughters of Idaho, Inc.*, 144 Idaho at 26, 156 P.3d at 527. On questions of fact, the Court reviews the agency record independently of the district court's decision. *Cooper v. Bd. of Professional Discipline of Idaho State Bd. of Medicine*, 134 Idaho 449, 454, 4 P.3d 561, 566 (2000). The Court will defer to the agency's findings of fact unless those findings are unsupported by substantial evidence in the record as a whole. *Id.*

ARGUMENT

The outcome of this appeal is informed largely by the fact that Dr. Rammell violated the ISDA's domestic cervidae rules for the sole purposes of challenging the rules' validity in the context of a contested case proceeding. In his own words:

I was perfectly within my right to protest these rules. It wasn't the venue [the Department] favored. They'd rather have me try to sue the state and win. I felt like my position was greater as a defendant. They have been walking on my property violating my rights for several years. I am perfectly in my right to contest the rules that way.

Ex. 4, p. 30, ll. 4-11 (transcript of hearing before deputy director). In other words, Dr. Rammell had a choice of judicial and administrative forums, but he chose to violate the rules so as to appear in the most limited forum available to him: a quasi-judicial contested case.

I. No Due Process Violation Occurred Because the APA Provided the Rammells Real and Meaningful Opportunities in Judicial Forums to Challenge the Validity of the Domestic Cervidae Rules.

For the strategic reason that he felt his odds of success were better as a defendant, Dr. Rammell deliberately avoided the forums explicitly provided in the Idaho Administrative Procedure Act ("APA") for challenging the validity of agency rules. The APA provides that petitions for substantive review of agency rules "may be filed [in the district court] at any time." Idaho Code § 67-5273 (Michie 2006). It also authorizes district courts to hear an action for declaratory judgment to determine the "validity or

applicability of a rule.” Idaho Code § 67-5278 (Michie 2006)⁵ Both of these forums were readily available to Dr. Rammell, yet he deliberately violated the rules so that he could contest them “as a defendant.”

The opportunities provided in the APA for challenging agency rules fulfilled due process requirements. Due process “is not a concept to be applied rigidly, [but] is a flexible concept calling for such procedural protections as are warranted by the particular situation.” *Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho 82, 91, 982 P.2d 917, 926 (1999) (internal quotation omitted). Due process requirements are met if an individual is provided an “opportunity to be heard . . . at a meaningful time and in a meaningful manner.” *Id.* (internal quotation omitted). The APA provided the Rammells an opportunity to challenge the validity of the domestic cervidae rules in a meaningful time and in a meaningful manner by providing for declaratory judgments and petitions for review of agency rules. Indeed, inquiries into the validity of agency rules are ultimately the province of the courts. *See, e.g., Holly Care Center v. Dept. of Employment*, 110 Idaho 76, 82, 714 P.2d 45, 51 (1986) (“it is this Court’s duty to interpret the law [and within] that duty is the responsibility of deciding whether an administrative rule contradicts the wording of a statute”).

The availability of judicial forums for determining the validity of the domestic cervidae rules provided the Rammells with all of the processes of law that were due them,

⁵ In contrast, declaratory rulings by agencies are limited to the “applicability of any statutory provision or of any rule administered by the agency.” Idaho Code § 67-5232(a) (Michie 2006).

even if they chose not to avail themselves of such processes. *See, e.g., Ester v. City of Monmouth*, 903 P.2d 344, 350-51 (Or. 1995) (statute prohibiting challenge to local improvement district assessment except upon petition of ten taxpayers did not violate due process since petitioner “could have brought the challenge before the circuit court upon a writ of review”); *Watahomigie v. Arizona Bd. of Water Quality Appeals*, 887 P.2d 550, 557-58 (Ariz. App. 1994) (the “fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner . . . [w]hen this opportunity to be heard is granted to a complainant who chooses not to exercise it, that complainant cannot later plead a denial of procedural due process”).

II. Due Process Was Not Violated by the ISDA’s Decision to Not Delegate to ISDA Hearing Officers the Authority to Determine Validity of Agency Rules, Since the Authority to Make Such Determinations Was Reserved to the Agency Head and Ultimately the Reviewing Court.

Much of the Rammells’ argument rests on the premise that the APA, and the rules implementing the APA, required the ISDA to delegate to hearing officers the authority to determine the validity of agency rules. In the Rammells’ view, the hearing officer’s refusal to make a preliminary determination regarding the validity of the domestic cervidae rules violated the Rammells’ due process rights. This argument necessarily fails, for the initial premise is incorrect. The APA authorizes agency heads to reserve to themselves the authority to determine all issues relating to the validity of agency rules.

Under the APA, agency heads may serve as presiding officers at contested case hearings, or they may delegate such responsibilities to hearing officers. Idaho Code § 67-

5242 (Michie 2006). Hearing officers may either issue recommended orders, which must always be reviewed by the agency head before becoming final orders, Idaho Code § 67-5244 (Michie 2006), or they may issue preliminary orders, which are subject to review by the agency head upon petition of one or more parties. Idaho Code § 67-5245 (Michie 2006).

The scope of authority of hearing officers is not explicitly addressed in the APA, but was left to be determined by rules promulgated by the Attorney General. Idaho Code § 67-5206(4) (Michie 2006). Such rules were to apply to all agencies, unless the agency promulgated alternative rules after the promulgation of rules by the Attorney General. Idaho Code § 67-5206(5) (Michie 2006).

The rules adopted by the Attorney General state that hearing officers are to “preside at and conduct hearings, accept evidence into the record, rule upon objections to evidence, and otherwise oversee the orderly presentation of the parties at hearing.” IDAPA 04.11.01.413 (hereinafter “Attorney General Rules”). Hearing officers are to make recommended or preliminary orders to the agency head consisting of “findings of fact [and] conclusions of law.” *Id.*

As a general matter, hearing officers are not authorized to determine the validity of agency rules unless such authority is explicitly delegated to the hearing officer by the agency head: Attorney General Rule 416 states that the agency head “*may* delegate to a hearing officer the authority to *recommend* a decision on issues of whether a rule is within the agency’s substantive rulemaking authority or whether the rule has been

promulgated according to proper procedure or may retain all such authority itself.”

Attorney General Rule 416 (emphasis added).

The ISDA, in promulgating its own rules of practice and procedure, chose to limit the role of hearing officers to the traditional functions of controlling discovery, presiding at hearing, and issuing a recommended or preliminary order with findings of fact and conclusions of law. ISDA Procedural Rule 10.05. ISDA rules do not delegate generally to hearing officers the authority to determine challenges to the validity of ISDA rules, nor was such authority delegated specifically in the contested case below. Thus, the hearing officer in the contested case below was not authorized to determine the validity of agency rules. That authority was reserved to the agency head.

ISDA’s limitation of the hearing officer’s authority to exclude determinations of the validity of agency rules was consistent with due process requirements, for the Rammells were free to preserve the issue of the rules’ validity before the hearing officer for later determination by the agency head, and ultimately, the reviewing court. Due process is not violated if the initial steps in the hearing process are limited in scope so long as opportunities are provided prior to the final order to challenge the validity of the rules being applied. *See Spencer v. Kootenai County*, 145 Idaho 448, ___, 180 P.3d 487, ___ (2008) (whether violation of procedural due process occurred is to be determined by examining “the proceedings as a whole”).⁶

⁶ After arguing that the ISDA erred in *not* applying IDAPA 04.11.01.416 (Attorney General Rule 416) to the contested case below, the Rammells ask “that IDAPA

A. Due Process was not violated when the hearing officer ruled certain testimony inadmissible due to lack of relevancy.

While the hearing officer lacked authority to decide issues relating to the validity of the rules, she was delegated the authority to make rulings on the admissibility of evidence relating to the Rammells' challenge to the rules. The hearing officer afforded due process to the Rammells by allowing Dr. Rammell to make a factual record relating to the reasonableness of the rules sufficient to preserve Dr. Rammell's ability to argue issues of reasonableness before the agency head and the district court.

The evidence and testimony submitted by Dr. Rammell was necessarily subject to rulings of admissibility by the hearing officer. Hearings officers possess broad discretion over the admittance of evidence in contested case hearings and may "exclude evidence that is irrelevant, unduly repetitious, excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho." Idaho Code § 67-5251 (Michie 2006); *Chisholm v. Idaho Dept. of Water Resources*, 142 Idaho 159, 163, 125 P.3d 515, 519 (2005). The decisions of hearing officers on admissibility are reversed only "when there has been an abuse of discretion; however, the Court reviews questions of relevancy de novo." *Chisholm*, 142 Idaho at 163, 125 Idaho at 519.

04.11.01.416 be found to have been unconstitutionally applied to Mr. [sic] Rammell as in violation of his due process rights under the Fourteenth Amendment and by incorporation the Fifth Amendment to the United States Constitution." Appellant's Brief at 15. Since, as Dr. Rammell acknowledges, Attorney General Rule 416 was neither adopted by the ISDA nor applied in the action below, no further response if necessary.

While Dr. Rammell did submit extensive testimony in support of his theory that the domestic cervidae rules were unreasonable, certain evidence relating to CWD was ruled inadmissible because Dr. Rammell failed to establish the relevancy of such evidence as it related to the specific counts alleged against him. *E.g.*, Ex 2, p. 459, ll. 7-16; p. 462, ll. 14-17; *cf. Chisholm*, 142 Idaho at 163, 125 P.3d at 519 (upholding exclusion of proffered exhibits where party had not “articulated the relevancy of the proffered exhibits to the satisfaction of the hearing officer”). Due process is not denied when a hearing officer acts within her discretion to exclude evidence due to the petitioner’s failure to establish foundation or relevancy, especially if the petitioner is allowed to make offers of proof. If the Rammells believed that the exclusion of evidence for lack of foundation or relevancy was in error, their proper remedy was to appeal the specific evidentiary rulings of the hearing officer for abuse of discretion, not to broadly assert that they were denied due process.

B. The Rammells were afforded the opportunity to challenge the validity of the domestic cervidae rules before the agency head but failed to do so.

Following the proceedings before the hearing officer, a preliminary order was issued, and the Rammells filed a petition with the agency head’s designee (hereinafter the “agency head”) for review of the preliminary order. In seeking review, however, Dr. Rammell made no attempt to present a cogent argument as to why the domestic cervidae rules are not a reasonable implementation of the domestic cervidae statutes. Instead, he confined himself to arguing that the hearing officer erred in ruling that she had not been

delegated authority to determine the validity of the rules. Ex. 6; AR 53 at 5-7. The lack of substantive argument before the agency head regarding the validity of the rules was a strategic choice by the Rammells.

Indeed, neither the hearing officer, ISDA attorneys nor the agency head prevented the Rammells from challenging the validity of the domestic cervidae rules before the agency head. The Rammells' insistence on trying reasonableness as an issue of fact, however, led the agency head to clarify that in future cases, the "[c]onsistency of rules with statute and reasonableness of rules are issues of law [and] must be presented to the Director or his designee as a legal argument in a petition for review of a preliminary order or of a recommended order." Ex.6: AR 68 at 8. As discussed in detail below, this limitation, even though not applied specifically to the Rammells, is a correct statement of the standard used in Idaho for determining the reasonableness of quasi-legislative rules. Thus, the ISDA agency head was not violating constitutional or statutory provisions, exceeding the agency's statutory authority, or acting under unlawful procedure when he ruled that a challenge to the legality of the rules was an issue of law that needed to be presented to the agency head or his designee by legal argument.

C. Upon petition for judicial review the Rammells were once again afforded the opportunity to challenge the validity of the domestic cervidae rules, and once again failed to do so.

The Rammells sought judicial review of the ISDA's final order. R., pp. 1-5. The APA provides that a district court may set aside an administrative order if it "finds that the agency's findings, inferences, conclusions, or decisions are . . . in violation of

constitutional or statutory provisions [or] in excess of the statutory authority of the agency.” Idaho Code § 67-5279 (Michie 2006). Thus, upon judicial review, the Rammells once again had the opportunity to present a substantive argument in support of their assertions that the domestic cervidae rules, as applied to the Rammells, were in excess of the authority granted to the agency in the domestic cervidae statutes. Once again, the Rammells failed to avail themselves of the opportunity to present such argument. As discussed above, so long as such opportunity was made available to the Rammells, they were afforded all the process due to them, even if they failed to avail themselves of it.

D. Due Process did not require that the Rammells be afforded the opportunity to establish an independent factual record to challenge the reasonableness of the rules.

As demonstrated above, Dr. Rammell’s purpose in violating the domestic cervidae rules was to gain a forum in which to challenge the rules. As also demonstrated above, Dr. Rammell failed to avail himself of alternative forums and failed to provide substantive arguments for the invalidity of the rules before both the agency head and the district court. In large part, this is due to Dr. Rammell’s repeated insistence, without supporting authority, that he be allowed to develop a factual record for the purpose of showing the rules had no reasonable relation to the purposes of the domestic cervidae statutes.

Dr. Rammell’s right to due process, however, did not include the right to make a independent factual record to disprove the reasonableness of the rules. The Legislature

delegated to the ISDA broad authority to “make, promulgate, and enforce general and reasonable rules” for the prevention of diseases among domestic cervidae and to “otherwise effectuate” other code provisions applicable to domestic cervidae. Idaho Code § 25-3704 (Michie 2000). While the judiciary must always make “an independent determination whether the agency regulation is ‘within the scope of the authority conferred,’” such determination also “includes an inquiry into the extent to which the legislature intended to delegate discretion to the agency to construe or elaborate on the authorizing statute.” *Roeder Holdings, L.L.C. v. Bd. of Equalization of Ada County*, 136 Idaho 809, 813, 41 P.3d 237, 241 (2002), quoting *Yamaha Corp. of America v. State Bd. of Equalization*, 960 P.2d 1031, 1041 (Cal. S. Ct. 1998). Where the Legislature grants an agency broad power to craft “quasi-legislative rules,” judicial review is “narrow.” *Id.*⁷

Factual support for quasi-legislative choices need not be detailed. “[A] legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.” *V-I Oil Co. v. Idaho State Tax Comm’n*, 134 Idaho 716, 720, 9 P.3d 519, 523 (2000), quoting *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993). The same is true for agency rules. “An agency engaging in rule-making is not required to make specific and detailed findings and conclusions of the kind customarily associated with a formal proceeding.” 1 Charles H. Koch, *Administrative Law and Practice* § 4.41[2] (1997).

⁷ *Roeder* was partially overturned on other grounds in *Ada County Bd. Of Equalizers v. Highlands*, 141 Idaho 202, 108 P.3d 349 (2005).

Thus, the APA provides that rulemaking, like legislating, is not required to be record-based: “Except as otherwise required by a provision of law, the rulemaking record need not constitute the exclusive basis for agency action on that rule or for judicial review thereof.” Idaho Code § 67-5225 (Michie 2006). Indeed, the APA encourages agencies to engage in “informal rulemaking whenever it is feasible to do so” by engaging in negotiated rulemaking, a “process where all interested parties and the agency seek consensus on the content of a rule.” Idaho Code § 67-5220 (Michie 2006).

Given the above principles, particularly that rulemaking need not be supported by an evidentiary record of the kind used in a contested case proceeding, due process does not require that the Rammells be allowed to engage in an independent evidentiary inquiry into the factual basis for the domestic cervidae rules. *Cf. Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 547-548 (1978) (if statute does not require record-based rulemaking, the courts cannot impose such a requirement). The principle of narrow review of quasi-legislative rules applies regardless of whether the inquiry is initiated in a contested case or in a judicial action. The Rammells were provided a forum for challenging the reasonableness of the rules as a matter of law, thus according them a full opportunity for a meaningful inquiry into the reasonableness of the domestic cervidae rules. The Rammells’ failure to take advantage of this opportunity was by choice, not because of any denial of due process.

III. Assuming the Issue Is Properly Before the Court, the Domestic Cervidae Rules are Reasonable.

On appeal to this Court, Dr. Rammell argues substantively that the domestic cervidae rules are unreasonable. While such arguments were offered before the hearing officer, they were not made to the agency head or to the district court below. It is well-established that this Court will not “entertain issues or theories not raised in the court below.” *Kolar v. Cassia County*, 142 Idaho 346, 350, 127 P.3d 962, 966 (2005).

Assuming, *arguendo*, that the Court addresses the reasonableness of the domestic cervidae rules, it must apply the narrow standard of review described above. “If satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statutes, judicial review is at an end.” *Yamaha Corp. of America v. State Bd. of Equalization*, 960 P.2d 1031, 1036 (Cal. S. Ct. 1998).⁸

It was reasonable for ISDA to specify gate and fencing requirements to keep domestic elk from escaping and mingling with wild elk. If gate and fencing standards were left to the discretion of individual producers, ISDA would be left to make *ad hoc* determinations as to the functionality of myriad fence designs. For this reason, other states that allow domestic cervidae farms also provide specific standards for fence height, materials, post spacing, and gate construction. *See, e.g.*, Or. Admin. R. 635-049-0245;

⁸ In *Roeder Holdings, L.L.C. v. Bd. of Equalization of Ada County*, 136 Idaho 809, 813, 41 P.3d 237, 241 (2002), the Court adopted the “*Yamaha Court*[’s] narrow standard under which quasi-legislative rules are reviewed.”

Vt. Code R. 20.022.021 (2008); *Operational Standards for Registered Privately Owned Cervidae Facilities* (Mich. Dept. Agriculture 2000).⁹ It is also reasonable for the ISDA to determine that fences assist in preventing the spread of diseases between wild elk and domestic elk, and in preventing the purposeful or inadvertent conversion of wild elk. See Idaho Code 36-704 (Michie 2002) (no person “shall capture or possess any wildlife, owned or held in trust by the state”). The APA does not require affidavits or testimony to establish such common-sense propositions.

Likewise, the inventory, record-keeping, inspection and certificate requirements of the domestic cervidae rules are all reasonably related to disease prevention in domestic herds and stopping the spread of disease to wild herds. It is well-established that “many of the successful animal disease eradication and control programs enable identification and tracking of animals back to their place of origin.” Matthew E. Rohrbaugh, *It’s Eleven O’Clock, Do You Know Where Your Chicken Is? The Controversy Surrounding the National Animal Identification System and its Application to Small and Organic Farmers*, 32 Vt. L. Rev. 407, 410 -411 (2007). Once disease is discovered, accurate inventory information enables agricultural agencies to “track down animals carrying the disease and prevent them from spreading it to others.” *Id.* On their face, the domestic cervidae rules establish the relationship between identification requirements and disease prevention. When animals are moved, each animal must be officially identified by its

⁹ Found at http://trrwhitetails.com/documents/MDA_Operational_Standards_for_Cervidae_Facilities_40365_7.pdf

identification number and it must be certified that each animal has had a tuberculosis test in the last 90 days. Domestic Cervidae Rule 250. When each domestic elk dies, a death certificate identifying such elk by its official identification number must be submitted to ISDA, along with tissue samples for CWD testing. Domestic Cervidae Rule 205.

Without verified identification numbers, such measures would be meaningless.

Accurate inventory and identification of domestic cervidae is of special concern given the potential for diseases to spread to wild elk populations. It has been written that “[c]hronic wasting disease is now considered an immediate and severe threat to North American cervids and has dramatically altered the management of wild deer and elk.” Ronald W. Opsahl, *Chronic Wasting Disease of Deer and Elk: A Call for National Management*, 33 *Envtl. L.* 1059, 1077 (2003). Many states have implemented inventory and identification programs “so that the movement of any animal later determined to have contracted CWD may be determined and any herd with which the animal has been in contact can be identified.” *Id.* at 1079. The threat is so widely recognized that all 50 states now have regulations concerning captive cervid operations. *Id.* at 1077.

Thus, mandatory identification of each domestic elk is rationally related to disease detection and prevention. The annual inventory conducted by ISDA is intended to verify that all domestic elk are properly identified. If the elk are identified with bangle tags (large plastic tags readable at a distance), then the elk are not gathered and restrained for the inventory. If the operation chooses not to use bangle tags, then the elk must be gathered and restrained. Dr. Rammell chose not to use bangle tags, and thus the gather

and restraint requirements of the domestic cervidae rules were a reasonable means of verifying the identify of the Rammells' elk.

IV. Assuming the Issue Is Properly Before the Court, Idaho Code § 25-3708 Is Constitutional.

The Rammells assert that Idaho Code § 25-3708, which requires domestic cervidae owners to pay an annual fee to ISDA of five dollars per head, is a violation of the equal protection clause of the United States Constitution and a violation of Idaho Constitution Article III, § 19, which prohibits the passage of special or local laws for the assessment and collection of taxes. While this issue was originally raised in the Rammells' answer to the administrative complaint (Ex. 6: AR 3), it was agreed that it would not be addressed before the agency, but rather preserved for appeal. Ex. 6: AR 14 (Stipulation). On their appeal to the district court, however, the Rammells did not challenge the constitutionality of Idaho Code § 25-3708. R., pp. 1-4; 82-101. It is well-established that this Court will not "entertain issues or theories not raised in the court below." *Kolar*, 142 Idaho at 350, 127 P.3d at 966.

Assuming, *arguendo*, that this Court nonetheless reaches the issue, it is clear that Idaho Code § 28-3708 is constitutional. This Court employs a three-step framework for analyzing whether government actions comply with the equal protection requirements of both the federal and Idaho Constitutions. *Rudeen v. Cenarrusa*, 136 Idaho 560, 569, 38 P.3d 598, 607 (2001). The first step is to identify the classification that is being challenged. *Id.* The second step is to determine the standard under which the

classification will be judicially reviewed. *Id.* The final step is to determine whether the appropriate standard has been satisfied. *Id.*

Here, the challenged classification is purely economic, and does not involve a suspect class or a fundamental right. “The established rule in Idaho is that the rational basis test is the appropriate standard of review of classifications made for tax purposes.” *Tarbox v. Tax Comm’n*, 107 Idaho, 957, 959, 695 P.2d 342, 344 (1984). The same is true for governmental fees. *Madison v. Craven*, 141 Idaho 45, 48, 105 P.3d 705, 708 (Ct. App. 2005). Thus, if the statutory classification is rationally related to a legitimate government objective, the challenged fee must be sustained.

The rational basis for the domestic cervidae fee is explicitly stated on the face of the statute: to provide a funding source “for the prevention, control and eradication of diseases of domestic cervidae, the inspection of domestic cervidae and domestic cervidae farms or ranches, and administration of the domestic cervidae program.” Idaho Code § 25-3708 (Michie 2000). Controlling diseases and inspecting domestic cervidae facilities are legitimate government objectives. The fee classification is limited to domestic cervidae owners, since they are persons whose activities created the need for the funded program. The fee is not irrational; indeed, other categories of livestock are subject to similar fees. *See, e.g.*, Idaho Code § 25-131 (Michie 2000) (levying fee on sale of wool by sheep producers order “for the board of sheep commissioners to carry out” its statutory duties of disease prevention and predator control); § 25-1160 (Michie Supp. 2007) (imposing fee of \$1.25 per head of cattle and \$1.50 per head of horses, mules and

asses for brand inspection); §§ 25-232 and -233 (Michie 2000) (levying fee of 22¢ per head of cattle, horses, and mules to be used for purposes of livestock disease control).

Likewise, the per head fee requirement of Idaho Code § 25-3708 is not a local or special law for the assessment and collection of taxes prohibited by Article III, Section 19 of the Idaho Constitution. The tests for local and special laws are distinct and should not be conflated. A law is not local “when it applies equally to all areas of the state.” *Moon v. North Idaho Farmers Ass’n*, 140 Idaho 536, 546, 96 P.3d 637, 647 (2004), quoting *Sun Valley Co. v. City of Sun Valley*, 109 Idaho 424, 429, 708 P.3d 147, 152 (1985). A law “is not special when it treats all persons in similar situations alike.” *Id.*, quoting *Sun Valley*, 109 Idaho at 429, 708 P.2d at 147. A legislative classification does not violate the prohibition on “special” laws unless it is arbitrary, capricious or unreasonable. *Id.*

Here, it cannot be seriously contended that Idaho Code § 25-3708 is “local.” By its terms, it applies to all owners of domestic cervidae wherever located. Nor is it a prohibited “special” law: the Legislature reasonably identified owners of domestic cervidae as a distinct class to which the per head fee applied. The distinction between domestic cervidae and other livestock is so obvious as to not require extended discussion. It is simply this: domestic cervidae are indistinguishable from wild elk and must be strictly regulated to prevent corruption of Idaho’s wild elk through disease transmission or genetic depletion. *See generally* Ronald W. Opsahl, *Chronic Wasting Disease of Deer and Elk: A Call for National Management*, 33 *Envtl. L.* 1059 (2003); J.M. Kelley, *Implications of a Montana Voter Initiative that Reduces Chronic Wasting Disease Risk*,

Bans Canned Shooting, and Protects a Public Trust, 6 Great Plains Nat. Resources J. 89, 94-97 (2001). Strict regulation is also necessary to insure that wild elk are not appropriated purposefully or inadvertently by domestic cervidae farmers. *See State v. Brogan*, 862 P.2d 19, 25-26 (Mont. 1993) (confirming elk farmer's conviction for illegally capturing over 80 wild elk).

Given the above facts, Dr. Rammell has not overcome the "strong presumption of validity" accorded to Idaho statutes. *In re Karel*, 144 Idaho 379, 383, 162 P.3d 758, 762 (2007). Accordingly, this Court must hold Idaho Code § 25-3708 to be constitutional. *See id.* ("In interpreting a statute, an appellate court is obligated to seek an interpretation that upholds its constitutionality").

V. The Hearing Officer Was Not Required to Disqualify Herself.

Dr. Rammell filed a motion to disqualify the hearing officer immediately prior to the start of the contested case hearing. As noted in the Appellant's Brief, the motion "was based upon the fact that the Rammells wished to contest the reasonableness of the applicable rules which would require the Hearing Officer [to] have some knowledge of the industry so as to better be able to make rulings and determinations on the record with regard to objections and the issue of reasonableness." Appellant's Brief at 17.

Neither due process requirements nor the terms of the APA required the hearing officer to disqualify herself. The APA delegates to the Attorney General the authority to determine the "qualifications for persons seeking to act as a hearing officer." Idaho Code § 67-5206(4)(g) (Michie 2006). The Attorney General determined that hearing officers

“may be (but need not be) attorneys.” Attorney General Rule 410. *If* the hearing officer is not an attorney, *then* such person should possess “technical expertise or experience before the agency.” *Id.* There is no requirement that attorneys serving as hearing officers possess technical expertise. The applicable procedural rule of the ISDA is identical to the Attorney General’s rule. ISDA Procedural Rule 10.02; *see also Spencer v. Kootenai County*, 145 Idaho 448, ___ n.1, 180 P.3d 487, ___ n.1 (2008) (“due process does not require any particular technical or educational background on the part of the decision-maker. What is required is that the decision-maker be impartial and disinterested”).

Here, the hearing officer, Jean Uranga, was a member of the Idaho state bar, and thus qualified as a hearing officer under the terms of ISDA Procedural Rule 10.02. Moreover, Dr. Rammell’s motion to disqualify the Hearing Officers was not timely filed. The APA requires that such motions be filed “within fourteen (14) days after receipt of notice indicating that the person will preside at the contested case.” Idaho Code § 67-5252(2)(a) (Michie 2006). Alternatively, such motions may be filed “promptly upon discovering facts establishing ground for disqualification.” Idaho Code § 67-5252(2)(b) (Michie 2006).

Dr. Rammell received notice that Ms. Uranga was assigned to hear the contested case on August 12, 2004, when Ms. Uranga issued a Notice of Hearing. Ex. 6: AR 5. Dr. Rammell did not move to disqualify Ms. Uranga until December 13, 2004. Ex. 6: AR 49 (Motion of Disqualification). Thus, Dr. Rammell’s motion to disqualify Ms. Uranga was untimely under the terms of Idaho Code § 67-5252(2)(a), since it was not filed within

fourteen days of receiving notice of her appointment. Dr. Rammells' motion to disqualify Ms. Uranga was also untimely under the terms of Idaho Code § 67-5252(2)(b), since he failed to demonstrate, or even allege, that he had only recently discovered Ms. Uranga's lack of specific knowledge of the domestic cervidae industry. Indeed, as noted in Dr. Rammell's Memorandum in Support of Motion of Disqualification (Ex. 6: AR 5), Ms. Uranga had presided over an earlier contested case involving Dr. Rammell, so that Dr. Rammell was well aware of her background.

Given that the motion to disqualify Ms. Uranga was untimely, Dr. Rammell's argument that Ms. Uranga should have disqualified herself has no merit.

VI. The Agency's Award of Attorney Fees, as Modified by the District Court, Should Be Upheld.

Idaho Code § 12-117 authorizes agencies to award attorney fees to the prevailing party in administrative proceedings when the other party acts without a reasonable basis in law or fact. *See, e.g., Stewart v. Dept. of Health and Welfare*, 115 Idaho 820, 822, 771 P.2d 41, 43 (1989) (Idaho Personnel Commission has authority under 12-117 to award attorney fees "for proceedings at the administrative agency level"); *Ockerman v. Ada County Bd. of Comm'rs*, 130 Idaho 265, 267, 939 P.2d 584, 586 (Ct. App. 1997) (hearing officer in contested case has authority to award attorney fees and costs).

Here, the hearing officer concluded that Dr. Rammell acted "without a reasonable basis in fact or law," and concluded that the Department was "entitled to an award of reasonable attorney's fees, witness fees, and reasonable expenses as the prevailing party."

Ex. 6: AR 66 at 21. The agency head confirmed the award of attorney fees to the Department in the amount of \$19,143.00 and costs and expenses in the amount of \$10,229.96. Ex. 6: AR 140 (Supplemental Final Order of the Deputy Director on Costs and Attorney's Fees). These fees were partially upheld by the district court, which reduced the award of attorney fees and costs by one-half to reflect its finding that the ISDA allowed the hearing to go on longer than necessary. R., p. 161.

The Rammells now assert that even if this Court were to uphold the Final Order of the ISDA and the Memorandum Decision of the district court, it should nonetheless overturn the award of costs and attorney's fees based on the single fact that the hearing officer concluded that 23 elk were unaccounted for, instead of the 28 elk alleged in Count 7 of the Administrative Complaint. Ex. 6: AR 1. The Rammells contend that their alleged success in demonstrating the lesser number demonstrates that his defense was not without a factual basis.

The record does not support the Rammells' contention. The number of missing elk is simply irrelevant to the disposition of Count 7 of the Administrative Complaint. Count 7 alleged that the Rammells had violated Domestic Cervidae Rule 201, which required the Rammells to submit an annual domestic cervidae inventory report by December 31 of each year, and had violated Domestic Cervidae Rule 200, which required submission of an intrastate movement certificate when moving elk from on premises to another. It is undisputed that the Rammells failed to submit the inventory report and

intrastate movement certificates to ISDA. Thus, a clear violation occurred regardless of the number of missing elk.

Moreover, the award of attorney fees and costs does not hinge on the outcome of a single count in the administrative complaint. The hearing officer, in awarding attorney fees, properly examined whether Dr. Rammell's defense lacked any factual or legal basis by examining Dr. Rammell's conduct during the entire course of litigation. *Turner v. Willis*, 116 Idaho 682, 685, 778 P.2d 804, 807 (1989) ("[t]he frivolity and unreasonableness of a defense is not to be examined only in the context of trial proceedings. The entire course of the litigation will be taken into account"). Here, Dr. Rammell initiated the litigation by purposefully violating the domestic cervidae rules because he believed the odds of successfully contesting the rules was "greater as a defendant." Ex. 4, p. 30, ll. 4-11. As the agency head concluded: "Refusing to abide by statutes and rules that are still on the books simply because Respondents believed that they were unconstitutional is not reasonable. If respondents wanted to challenge the rules, they could have done so in District Court rather than refusing to abide by them." Ex. 6: AR 68 at 8.

In short, Dr. Rammell sought to provoke the Department into filing an administrative complaint so that Dr. Rammell could use the contested case proceedings as a vehicle for attacking the reasonableness of the domestic cervidae rules. Dr. Rammell then proceeded to insist, without legal foundation, that he was entitled to present factual evidence for the purpose of demonstrating that the domestic cervidae rules were

unreasonable. Such an action had no reasonable basis in law or fact, since it ignored the fact that under Idaho law, rule-making proceeds informally and need not be supported by empirical data. Challenges to quasi-judicial rules are reviewed narrowly, so that agencies are not required to engage in evidentiary review of agency rules when such rules are challenged in a contested case hearing. Dr. Rammell's persistence in making an unnecessary evidentiary record required the ISDA to incur unnecessary costs and attorney fees. Thus, the award of attorney fees and expenses to the ISDA was authorized by Idaho Code § 12-117 and should be upheld.

REQUEST FOR ATTORNEY FEES ON APPEAL

For the reasons stated immediately above, an award of attorney fees and costs on appeal should be awarded to the ISDA pursuant to the terms of Idaho Code § 12-117. The Rammells continue to assert, without any reasonable basis in law or fact, that they were denied due process and that the domestic cervidae rules are unreasonable, causing ISDA to unnecessarily incur attorney fees and costs in defense of this appeal. Moreover, the Rammells have forced the ISDA to expend considerable time and expense in responding to issues that were not properly preserved before the district court. *See Vendelin v. Costco Wholesale Corp.*, 140 Idaho 416, 434, 95 P.3d 34, 52 (2004) (awarding attorney fees on appeal when appellant raised many issues that were not raised before the district court and were not properly before the court on appeal).

CONCLUSION

This Court should:

(a) affirm the Judgment of the district court that upheld the contested case order of the ISDA and partially upheld the award of attorney fees and costs to the ISDA, and

(b) award the ISDA reasonable attorneys' fees and costs on appeal for defending against issues with no reasonable basis in fact or law and for defending against issues not preserved in the district court.

RESPECTFULLY SUBMITTED this 13th day of June, 2008.

LAWRENCE G. WASDEN
Attorney General
Clive J. Strong
Division Chief, Natural Resources Division



STEVEN W. STRACK
Deputy Attorney General

CERTIFICATE OF MAILING

I hereby certify that on June 13th, 2008, I caused to be mailed two true and correct copies of the forgoing **RESPONDENT'S BRIEF** to the Appellants' counsel as identified on the front cover.

A handwritten signature in black ink, appearing to read "Steven W. Strack", written over a horizontal line.

STEVEN W. STRACK
Deputy Attorney General

Appendix 1:
Excerpts from Exhibit 1

Transcript of hearing before hearing officer – Vol. 1

Idaho State Department of Agriculture

IDAHO STATE DEPARTMENT OF)	Case No.
AGRICULTURE,	Complainant,)	M03-02-04-1130DC
)	
	vs.)	
)	
REX RAMMELL and LYNDIA	Respondents.)	
RAMMELL, doing business as ELK)	
COUNTRY TROPHY BULLS,)	
)	
)	
)	

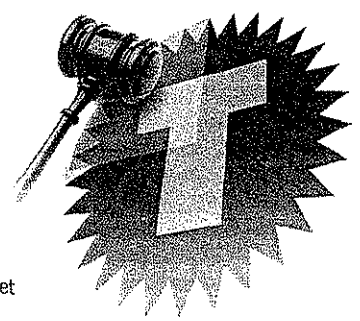
BEFORE
JEAN R. URANGA
Hearing Officer

Held on December 15, 2004
9:00 a.m.

Reported by
Frances J. Morris
No. 696

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1 procedure, and there is no parallel in the
 2 department's rules of procedure.
 3 The third issue that I would like to
 4 briefly touch on is that evidence in this case
 5 should only be admitted if it will help the trier
 6 of fact determine a remaining issue. The
 7 department's position really is that the essence of
 8 this case has been stipulated to and admitted to
 9 with the exception of the fencing violations and
 10 maybe that one count of the unaccounted for 28 head
 11 of elk.
 12 So that provides a framework for the
 13 admission of evidence and the remainder of this
 14 proceeding.
 15 Mr. Siddoway's testimony about how
 16 livestock, other than domestic cervidae, simply
 17 can't be said to have provided you the groundwork
 18 to determine whether or not respondent has refused
 19 to pay the \$5 per head fee. Representative
 20 Loertscher's testimony regarding the rules review
 21 process in the legislature really has no bearing or
 22 tie-in with these fencing violations that have been
 23 alleged. Same could be said for Dr. Marie Bulgin's
 24 testimony about scrapie. You just simply won't
 25 find an allegation of a scrapie violation in our

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1 complaint. And finally Mr. Schoonveld's testimony
 2 regarding the genesis of chronic wasting disease
 3 just does not have any bearing on the facts that
 4 have been alleged by the state.
 5 One final point I guess I'd like to make
 6 is that I think the respondent is fearful that he
 7 will be unfairly prejudiced by ruling in favor of
 8 the state on this matter. That is simply not the
 9 case. The doors of justice won't be slammed shut
 10 on respondent -- simply won't be slammed shut on
 11 the respondent. The proper forum has been, and
 12 still is, available to Dr. Rammell to bring these
 13 questions of law if you would rule in our favor.
 14 So a couple points on that issue. The
 15 courts will certainly exercise free review. We are
 16 not required to have questions of law confined to
 17 the record, only those questions of fact. You
 18 simply won't be prejudiced. The courts will
 19 provide that square hole for the square peg that
 20 respondent seeks to argue.
 21 So the state asks you to exclude this
 22 evidence in the hearing related to the
 23 reasonableness of the statutes and the
 24 constitutional arguments that are sought to be
 25 introduced here today.

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1 And with that, we ask that you would
 2 uphold the motion for the state. Thank you.
 3 THE HEARING OFFICER: Thank you.
 4 Dr. Rammell, your response? And I should note for
 5 the record, I didn't receive any written briefing
 6 or anything on this issue. You didn't submit any,
 7 did you?
 8 DR. RAMMELL: Yes, I did.
 9 THE HEARING OFFICER: When did you file that?
 10 DR. RAMMELL: 7th of December. It was my 14
 11 days, and I did receive it -- or I did send it.
 12 Excuse me.
 13 THE HEARING OFFICER: Did you receive any?
 14 MR. OAKLEY: Madam Hearing Officer, we
 15 received an unsigned and undated memorandum in
 16 opposition. We did file it in that state. We'd be
 17 glad to provide you a copy if you don't have one
 18 available.
 19 THE HEARING OFFICER: Let me double check.
 20 It may just be that I missed it. Yeah. I
 21 apologize. Here it is. Okay.
 22 DR. RAMMELL: Did I sign it?
 23 THE HEARING OFFICER: Yeah, the original.
 24 DR. RAMMELL: Okay. Sorry about that, Brian.
 25 MR. OAKLEY: That's all right.

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1 DR. RAMMELL: Ms. Uranga, I find it
 2 interesting that the deputy attorney general saying
 3 that the attorney general's rules do not apply, but
 4 yet he quoted them in his motion to provide limine.
 5 I think that they do apply. IDAPA rules procedure
 6 does not talk about a hearing officer's
 7 responsibility when it comes to decisions on the
 8 rules. Therefore you have to refer to rules
 9 outside of it. The Rule 416 clearly gives the
 10 agency, and if it's delegated -- the agency can't
 11 delegate authority to the hearing officer to make a
 12 decision on the rules.
 13 This whole case is about the statutes
 14 and the rules. If the statutes are
 15 unconstitutional, then there is no violation. If
 16 the rules are unreasonable based on the statute,
 17 there are no rules. Therefore my opening statement
 18 is that I am not in violation of anything.
 19 If you allow this motion to limit my
 20 witnesses and my exhibits, you're effectively
 21 eliminating my argument. And my argument is,
 22 again, that the rules are unreasonable. And if
 23 they are unreasonable, if I can prove that, which
 24 is what I intend to do with my evidence and my
 25 witnesses, prove that the rules are unreasonable.

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1 then I am in violation of nothing.

2 I have already agreed and note that you
3 cannot rule on count 1, fees. It's a complaint
4 against a statute. And it's clear the deputy
5 attorney general cited it in his motion referring
6 to the attorney general's code of rules that a
7 hearing officer cannot rule on the
8 constitutionality of a statute. That one is not a
9 question. I would like to present evidence,
10 however, that a district judge who has authority to
11 rule on the constitutionality of a statute will
12 have a record to review. Other than that, I'm not
13 asking you to make a ruling.

14 On the rest of the counts, however, it's
15 clearly within the authority of the department, the
16 agency, that you can make a decision whether the
17 rules fall within the substantive rule-making
18 authority of the agency.

19 Mr. Siddoway is an expert. He also
20 raises elk. He raises other animals also; sheep,
21 buffalo, and horses. When you make a decision
22 whether the rule is reasonable or not, or
23 unreasonable, you have to give comparisons.
24 Otherwise how could you ever decide whether it's
25 reasonable or not. I have no other way to argue

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1 this case other than to draw comparisons of what
2 "reasonable" would be. Mr. Siddoway will be able
3 to testify about his own operation, also. It
4 wasn't just about his sheep operation or the
5 buffalo that he owns or the horses that he owns.
6 He has an elk ranch. And part of the counts that
7 are claimed against me have to do with facilities.
8 And my argument is that the ISDA, Idaho State
9 Department of Agricultural, is not following its
10 customs and practices that are established with
11 other elk ranches. They are selectively enforcing
12 the rules and discriminating against myself, that
13 if these would have been a different rancher, these
14 would have never been brought up on count.

15 Therefore, I have to establish through
16 my witnesses -- and Mr. Wood, Mr. Jamie Wood is
17 also an elk rancher -- I have to establish what the
18 customs and practices of ISDA is when they deal
19 with inspections other than my own facility to give
20 you some basis to make a decision to establish
21 whether the rules are reasonable or not, to
22 establish whether the inspection that was conducted
23 was reasonable. The ISDA should be expected to
24 conform to their own rules. And if they single out
25 one person and apply them any differently than they

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1 do to anybody else, then they violate their own
2 statutory duties.

3 Dr. Bulgin is a scrapie expert. She's
4 the Idaho scrapie expert employed by the University
5 of Idaho. She is also very familiar with chronic
6 wasting disease. They both fall into the same
7 family of diseases. She's personally been
8 responsible and assisted with the testing of brains
9 that we submit from the elk. She has been to
10 numerous meetings all over the country where the
11 topics are when scrapie and CWD are talked about at
12 the same time because they have a lot of
13 similarities. And they have been compared, not
14 just by me, but a lot of other people.

15 This case is about the chronic wasting
16 disease program. Does it need to be mandatory or
17 could it be a voluntary program? Is there enough
18 risk that the state can compel or violate a
19 person's private property rights? Dr. Marie Bulgin
20 will be able to testify about how the scrapie
21 program is regulated so we could compare it to how
22 the elk industry is regulated. They are very
23 similar, and she has a lot of evidence that she can
24 present and give the trier of fact, yourself, the
25 information you need to make a decision whether the

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1 rules are reasonable or not.

2 Mr. Schoonveld was employed by the
3 Department of Wildlife in Colorado. He was present
4 at the time the first cases of chronic wasting
5 disease were discovered. He also has evidence,
6 circumstantial evidence, that there were
7 scrapie-infected sheep present when the first cases
8 of chronic wasting disease were discovered. His
9 testimony would simply be to draw the connection,
10 show that it is extremely possible that the disease
11 scrapie is responsible for the disease CWD. We
12 know that BSE, mad cow disease, the most prevalent
13 theory by far is that it originated from
14 scrapie-infected sheep.

15 So the state doesn't want me to present
16 any evidence that there is any relationship between
17 the two. But the truth is there is a great deal of
18 evidence. And I need to be given the opportunity
19 to present that evidence. Mr. Schoonveld will do
20 that. Dr. Bulgin, will do that. When we do that,
21 then it will allow the hearing officer to make a
22 ruling on the reasonableness of the rules. And if
23 you can -- I don't know how you could make this
24 decision whether these rules are reasonable or not
25 without some evidence that they are unreasonable.

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1 So it's my ruling that I don't have
 2 authority to invalidate an agency rule as being
 3 unreasonable. And I don't think I was granted a
 4 scope of authority to do that. I do think, though,
 5 however, Dr. Rammell has some ability to create a
 6 record for purposes of a district court review
 7 where -- or also by the agency head because the
 8 agency head would first review my decision before
 9 it might get to the district court in any event.
 10 So I will grant the motion in part and
 11 deny it in part. With respect to Mr. Loertscher, I
 12 am going to deny the ability to provide testimony
 13 on the rule-making process within the legislature.
 14 My understanding of case law would support that you
 15 can't call legislators to testify about contested
 16 legislation or what the process was.
 17 With respect to the other witnesses, I
 18 don't feel like I can rule them out without hearing
 19 what their background is or what the purpose of
 20 their testimony is.
 21 Dr. Rammell, I will have to have you be
 22 real specific with respect to each witness. Any
 23 testimony can relate only to the specific rules in
 24 question here, not just a general attack or shotgun
 25 approach to any rule that the department has

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1 adopted that relates to elk. We have got some very
 2 limited rules that are the subject here, and I
 3 think it's basically the fencing violations. The
 4 other violations are generally statutory.
 5 So the testimony will be limited for the
 6 purpose of you creating enough of a record to
 7 support your issues on appeal and your arguments on
 8 appeal and will be specifically restricted to the
 9 specific statutes or rules in question. And in
 10 order for expert testimony to come in, it's got to
 11 be somebody that has special expertise that would
 12 provide information that might be helpful to the
 13 finder of fact or the trier of fact.
 14 So I'm going to probably reserve, as
 15 each witness is called, ruling more specifically on
 16 each witness as to whether their testimony is
 17 relevant to the specific rules involved in this
 18 case. But I don't feel comfortable doing that
 19 without knowing what their potential testimony
 20 might be. So those issues will be addressed as
 21 those witnesses are called.
 22 MR. OAKLEY: Sure.
 23 THE HEARING OFFICER: Did you wish to make an
 24 opening statement?
 25 MR. OAKLEY: I did.

1 DR. RAMMELL: Excuse me. Ms. Uranga,
 2 Mr. Loertscher is en route from Idaho Falls. And I
 3 need to call him and turn him around.
 4 THE HEARING OFFICER: I understood that you
 5 were going to call him on a factual issue related
 6 to the inspection.
 7 DR. RAMMELL: He was present at the
 8 inspection. But what I really wanted to do was
 9 have him discuss the rules reviewed -- I wish you'd
 10 give him a chance and reconsider. I think he could
 11 help on this. No. 1, I talked to Mike Gilmore. He
 12 works, I don't know, with the administrative
 13 attorney general rules. And he unequivocally said,
 14 if the agency gave you authority, you could rule
 15 the rule unreasonable. 416 applies. I wish that
 16 you would pursue it, because I think what's going
 17 to happen is, you're going to find out you do have
 18 authority. It's going to go up on appeal and we
 19 will come right back. You say you believe you
 20 don't have authority, but I'd wish you'd check it.
 21 THE HEARING OFFICER: I read the attorney
 22 general's rules. First of all, agencies are allowed
 23 to opt out of the AG's rules. They don't have to
 24 follow the AG's rules; they can adopt their own,
 25 which the agency did in this case. They adopted

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1 their own rules and procedures. So the attorney
 2 general's rules and practices and procedures are
 3 not applicable. But even under the AG's rules,
 4 what it says is the hearing officer may be
 5 delegated the authority. I'm not hearing that the
 6 department's granted me the authority. But it says
 7 when an order is issued by the agency head in a
 8 contested case. So the agency head could make that
 9 ruling, but I'm not the one that makes the final
 10 decision in this case. The agency head would make
 11 that decision. And it also says you can determine
 12 whether it's within the agency's substantive
 13 rule-making authority and promulgated in accordance
 14 with proper procedure. There is a procedural
 15 argument being raised, and the statute does give
 16 the agency substantive rule-making authority to
 17 adopt and promulgate rules related to the
 18 regulation of domestic cervidae under enforcement
 19 of the provisions of the various chapters of
 20 statute.
 21 You may convince me later, but at this
 22 point I'm going to let you create your record, and
 23 maybe the agency head --
 24 DR. RAMMELL: Let's say the agency head does
 25 not delegate or has not delegated that authority to

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Appendix 2:
Excerpts from Exhibit 2

Transcript of hearing before hearing officer – Vol. 2

Idaho State Department of Agriculture

IDAHO STATE DEPARTMENT OF)	Case No.
AGRICULTURE,)	M03-02-04-1130DC
)	
Complainant,)	
)	
vs.)	
)	
REX RAMMELL and LYNDIA)	Respondents.
RAMMELL, doing business as ELK)	
COUNTRY TROPHY BULLS,)	
)	
)	

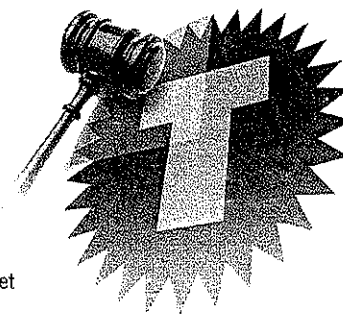
BEFORE
 JEAN R. URANGA
 Hearing Officer

Held on December 16, 2004
 9:00 a.m.

Reported by
 Frances J. Morris
 No. 696

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1 what's the other one? I don't know. Whatever the
2 other the rule is -- or the other count.

3 But the relevance is that I would like
4 to present for evidence information about chronic
5 wasting disease because it's the heart and soul of
6 this whole complaint. Mr. Schoonveld will testify
7 in his affidavit about evidence that he believes
8 existed of the origination of CWD in Colorado.

9 MR. OAKLEY: Mr. Schoonveld is testifying here
10 as an expert in this affidavit. There is no
11 foundation to establish he is an expert. It would
12 be highly prejudicial to the state not to have the
13 opportunity to cross-examine this witness.

14 THE HEARING OFFICER: I'm not going to admit
15 Exhibit *-00R for the reason that Mr. Schoonveld --
16 I don't even know what his educational
17 requirements --

18 DR. RAMMELL: He is an educated man.

19 THE HEARING OFFICER: But he's not here for
20 cross-examination, and the state is entitled to
21 cross-examine any witnesses.

22 DR. RAMMELL: I'd just like to note that in
23 the hearing conducted by Mr. Edson that an
24 affidavit of Mike Ferguson was allowed, and the
25 state was allowed -- the state had Dr. Phil Mamer

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1 enter a rebuttal affidavit. So...

2 THE HEARING OFFICER: That was another
3 hearing. I don't even know if there was an
4 objection raised. As I indicated earlier, the
5 state is entitled to cross-examine any witnesses.
6 They are not given an opportunity to do that with
7 an affidavit.

8 DR. RAMMELL: That's fine. Would it be all
9 right if we arranged for a telephone conference on
10 the 30th, and Mr. Oakley can then cross-examine him
11 by telephone?

12 THE HEARING OFFICER: Testimony can be
13 presented by telephone in administrative
14 proceedings, yes.

15 DR. RAMMELL: Is there any problem with that?

16 MR. OAKLEY: I don't know. I think that we
17 have got the ruling on the affidavit. If you want
18 to call him as a witness, it's your prerogative.

19 DR. RAMMELL: Okay. I'd like to make that
20 request right now before I forget.

21 THE HEARING OFFICER: Well, you can call
22 whatever witnesses you want. Do we have a
23 telephone available?

24 DR. RAMMELL: Well, yes, it was noted in the
25 notice of hearing that I had to notify to arrange

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1 for a telephone.

2 THE HEARING OFFICER: Okay. I don't know
3 which room we will be in next week. Would it be
4 possible to have telephone testimony?

5 MR. OAKLEY: That would be fine. With this
6 kind of a set up, we might have to use a different
7 room. We will make arrangements for the 30th.

8 THE WITNESS: All right.

9 DR. RAMMELL: What time should I arrange for
10 the conference?

11 THE HEARING OFFICER: You need to schedule
12 your witnesses at whatever time you want to
13 schedule them.

14 DR. RAMMELL: We could do it first thing.

15 THE HEARING OFFICER: Your call and your
16 order. You call them as you want.

17 DR. RAMMELL: Okay. Thank you. I will take
18 that back, then, if that's okay, since it's not
19 entered.

20 THE HEARING OFFICER: Okay. *-00R. I'm
21 returning that.

22 DR. RAMMELL: Thank you.

23 Q. BY DR. RAMMELL: Dr. Siroky, could you
24 identify this document?

25 A. It appears to be a printout of an USDA

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1 website information.

2 Q. Thank you. Information on what disease?

3 A. Chronic wasting disease.

4 Q. Thank you.

5 DR. RAMMELL: I'd like to enter this as an
6 exhibit, Exhibit *-00I.

7 THE HEARING OFFICER: Any objection?

8 MR. OAKLEY: Yes, the state objects on
9 relevance. There is nothing in the complaint that
10 alleges any violation of chronic wasting disease.
11 It's not what this case is about.

12 DR. RAMMELL: I'd strongly have to disagree.
13 Every one of the counts have to do with chronic
14 wasting disease.

15 THE HEARING OFFICER: Where does it say that
16 in the counts?

17 DR. RAMMELL: If we could look in the rules,
18 if you would like me to show you, all of those are
19 a part of the chronic wasting disease program.

20 THE HEARING OFFICER: What rules are part of
21 the chronic wasting disease program?

22 DR. RAMMELL: The ones that I have been
23 charged with. Every one of them are part of the
24 chronic wasting disease program.

25 THE HEARING OFFICER: Could you show me which

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1 rules you're specifically referring to?
 2 And first of all, let's just back up a
 3 little bit. You don't put in these kinds of
 4 documents through somebody who has never seen the
 5 document before.

6 DR. RAMMELL: What?

7 THE HEARING OFFICER: You can't offer this
 8 document through a witness who has never seen the
 9 document before. You can't just hand a witness a
 10 document, say, "What does it look like," and ask to
 11 admit it. You have to have foundation. You can't
 12 establish foundation where this came from through
 13 somebody that's never seen the document before. So
 14 if you want to offer it through your own testimony
 15 and review it at that time, you can. But
 16 Dr. Siroky is not the appropriate --

17 DR. RAMMELL: It's an ISDA download, and
 18 Dr. Siroky, I'm sure, has reviewed the ISDA
 19 website.

20 THE HEARING OFFICER: He didn't print the
 21 document. He didn't look. He doesn't have
 22 personal knowledge. You hand it to him and say,
 23 "What is it?" It's a document that appears to be
 24 printed. If you want to admit it, lay foundation
 25 through yourself or whoever printed it.

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1 DR. RAMMELL: Well, I would like to have it
 2 as an exhibit so that I can use the information in
 3 it to ask him questions. That's why I felt it was
 4 appropriate.

5 THE HEARING OFFICER: But you don't have
 6 foundation to admit the exhibit through him. You
 7 have got to get it in first, then you can ask him
 8 to look at it.

9 DR. RAMMELL: I need to get it in, so should
 10 I enter through myself right now?

11 THE HEARING OFFICER: Well, I'm not sure --
 12 first of all, I guess we better deal with the
 13 relevancy. You show me where in the complaint
 14 there is any issue of chronic wasting disease.

15 DR. RAMMELL: Let me find a copy of the
 16 rules. Would you like to recess for five minutes
 17 while I do that?

18 THE HEARING OFFICER: That would be fine.
 19 (Brief recess.)

20 THE HEARING OFFICER: Back on the record.
 21 We are dealing with the objection to
 22 relevance. There has been also a lack of
 23 foundation which we have already addressed. But
 24 relevance on the proposed Exhibit *-001.

25 DR. RAMMELL: Do you have a copy of the rules

1 in front of you?

2 THE HEARING OFFICER: I do.

3 DR. RAMMELL: If you could turn to 205. In
 4 count No. 7, do you also have that?

5 THE HEARING OFFICER: I do.

6 DR. RAMMELL: Tell me when you -- page 11.

7 THE HEARING OFFICER: Got it.

8 DR. RAMMELL: Count No. 7 towards the bottom
 9 of the paragraph, it says, "Domestic cervidae have
 10 died and a notice of death was not provided the
 11 ISDA." It refers to a rule in there. And then if
 12 you look at the rule that it refers to -- it's an
 13 amended rule by the way; they had the wrong
 14 number -- it says Notice of Death of Domestic
 15 Cervidae.

16 THE HEARING OFFICER: Yeah.

17 DR. RAMMELL: Are you with me?

18 THE HEARING OFFICER: Yeah.

19 DR. RAMMELL: The death of domestic cervidae
 20 over one year shall be reported by owner or
 21 operator by facsimile submission of a CWD sample
 22 submission form death certificate. So CWD is the
 23 reason that they want to be notified of the death
 24 so they can get a sample in. There is one.

25 I'd like to refer to Dr. Siroky's

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1 deposition. Is that all right?

2 THE HEARING OFFICER: For your argument for
 3 my ruling on the objection, sure.

4 MR. OAKLEY: May I address one issue with the
 5 rule before we move on?

6 THE HEARING OFFICER: Sure.

7 MR. OAKLEY: Count 7 alleges only that he
 8 failed to submit the submission certificate. It
 9 makes no allegation that there is an absence or
 10 presence of disease. That's not the point. The
 11 rule clearly requires the respondent to provide a
 12 certificate of death within five days of --

13 DR. RAMMELL: What's the reason for that?

14 THE HEARING OFFICER: It doesn't make any
 15 difference. There is no allegation that your elk
 16 have chronic wasting disease that I see in the
 17 complaint. It's not relevant.

18 DR. RAMMELL: There is no CWD in the state of
 19 Idaho. They are looking for it.

20 THE HEARING OFFICER: It's irrelevant.

21 MR. OAKLEY: That's exactly why we shouldn't
 22 be talking about it.

23 THE HEARING OFFICER: It's irrelevant to the
 24 issues set forth in the complaint.

25 DR. RAMMELL: Let me refer to 42. Did you

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1 keep his Exhibit *-00A?
 2 THE HEARING OFFICER: I've got it here.
 3 DR. RAMMELL: Turn to page 42, please.
 4 MR. OAKLEY: 42.
 5 THE HEARING OFFICER: I see it.
 6 DR. RAMMELL: If you look down on line 15.
 7 THE HEARING OFFICER: I'm looking at Exhibit
 8 *-00A, my page 42 of the deposition, line 15 which
 9 talks about gathering.
 10 DR. RAMMELL: Yeah, that's one of the counts
 11 that refers to the rule at .1 -- .01. Do you see
 12 that?
 13 THE COURT: Uh-huh.
 14 DR. RAMMELL: If you will -- the argument
 15 goes on about why we need to gather and -- why the
 16 owner has to gather and restrain elk.
 17 On page 45 starting with the question
 18 that says, "Do you enforce that?"
 19 "If it's necessary, if there is a
 20 disease that's high enough concern, yes, we would
 21 enforce that."
 22 The question was the CWD, would that
 23 require gathering and restraining.
 24 Answer: "CWD, yes."
 25 It's obviously one of the reasons that

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1 they want to gather -- the inventory validation
 2 inspection is to account for animals that may have
 3 died from CWD. They want to make sure that the
 4 producer is not hiding dead animals. That's why
 5 they have you submit the brains or notify them of
 6 death within five days, submit the sample for CWD
 7 testing. In this case, the reason they want to
 8 gather and restrain them is to check them for CWD.
 9 THE HEARING OFFICER: There is no evidence,
 10 information, or allegation that that's why your elk
 11 were inspected that CWD is relevant to this
 12 complaint. The issue here is that you refused to
 13 allow an inspection, not why an inspection was
 14 conducted.
 15 DR. RAMMELL: Maybe we could -- maybe I could
 16 ask Dr. Siroky if there is another reason why the
 17 inventory validation inspection was necessary --
 18 MR. OAKLEY: As far as --
 19 DR. RAMMELL: -- if it wasn't for CWD.
 20 MR. OAKLEY: As far as the deposition goes, I
 21 have got several ongoing objections as to relevancy
 22 for this very same purpose. If there is any
 23 discussion in here, it's because we didn't have the
 24 presence of Your Honor to make the ruling at the
 25 time of deposition.

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1 THE HEARING OFFICER: Okay. On Exhibit
 2 *-00I, I am going to deny admission for lack of
 3 foundation and irrelevant.
 4 DR. RAMMELL: I don't think you have heard
 5 the rest of my argument.
 6 THE HEARING OFFICER: You're free to make an
 7 offer of proof which means you state what you think
 8 you would otherwise prove.
 9 DR. RAMMELL: Page 88.
 10 THE HEARING OFFICER: You can make an offer
 11 of proof.
 12 DR. RAMMELL: So you won't reconsider with a
 13 little more argument?
 14 THE HEARING OFFICER: No. There is nothing
 15 in the complaint about chronic wasting disease
 16 and/or the rules that are applicable to the counts.
 17 DR. RAMMELL: Then you simply have no
 18 professional knowledge about this subject which is
 19 why I tried to disqualify you. You cannot see the
 20 relationship between the disease program and the
 21 rules.
 22 THE HEARING OFFICER: Dr. Rammell, if you
 23 want to make an offer of proof, you may do so.
 24 DR. RAMMELL: I will make an offer of proof
 25 that I would have, had I been allowed to argue,

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1 that the reason all of these rules are in place is
 2 because the CWD program. Every one of these rules
 3 has some connection to that program. CWD is the
 4 heart and soul of the rules. And it is the reason
 5 I protested. It's the reason that I have to run my
 6 elk through the chute every year. It's the reason
 7 my elk get injured. There is other diseases --
 8 brucellosis, tuberculosis, other things -- but they
 9 don't necessarily require a mandatory inventory
 10 validation every year. That was all because of
 11 CWD. To not admit CWD into this hearing, or any
 12 evidence about it -- risks, level of disease,
 13 programs -- is simply denying my right to an
 14 argument.
 15 I have evidence in Dr. Siroky's
 16 deposition that the reason that -- the main reason
 17 that elk are required to be gathered and restrained
 18 at any time of the year is in case they have a
 19 serious disease like CWD. I have evidence in
 20 Dr. Siroky's deposition, which has also not been
 21 allowed to be admitted into evidence, that the
 22 reason the calves have to be I.D.-ed by December
 23 31 -- quoting from page 89 of Dr. Siroky's
 24 deposition, line 7, referencing the inventory of
 25 and tagging, why is it necessary, inventory is a

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1 necessary requirement for the chronic wasting
2 disease program, the CWD program.
3 Rule 205 states that a notice of death
4 is required of domestic cervidae, and it reads,
5 "The death of domestic cervidae over one year of
6 age shall be reported by the owner or operator to
7 the division by telephone, electronic mail, or
8 facsimile transmission of a CWD sample submission
9 form death certificate."

10 It's apparent from that, which is also
11 in one of the counts I have been alleged, that I
12 haven't reported them in a timely manner, that the
13 reason that that is required is to provide a CWD
14 sample.

15 I have evidence provided from a USDA
16 website that documents the risk level of CWD. It
17 gives a history of CWD, when it originated, what
18 states it's been found in, it talks about the herd
19 certification program, how much surveillance has
20 been conducted throughout the United States, it
21 gives a current and past distribution of CWD among
22 captive cervids. It shows that there are only
23 three elk herds in the United States that may have
24 at least one case of CWD. It also shows that there
25 is one captive deer herd in Wisconsin that may have

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1 at least one case of CWD. It has provided current
2 distribution of free-ranging cervids that may have
3 CWD.

4 This evidence could be used -- I would
5 have used it to document the risk level, that it's
6 simply a very low risk that we could import CWD
7 from a domestic herd when there is only three of
8 them that have it in the whole United States. Only
9 three herds in Colorado.

10 I would have offered as an exhibit the
11 chronic wasting disease herd certification program
12 and intrastate movement of captive deer and elk
13 provided by the USDA. It's the proposed rule. It
14 establishes what the disease is. It gives an
15 economic analysis, the number of deer and elk herds
16 that have died.

17 THE HEARING OFFICER: What exhibit number is
18 that?

19 DR. RAMMELL: It is Exhibit *-00K. Largely
20 states because there is no way to track deaths. It
21 states for farmed animals the number of deaths to
22 date have been relatively low. It's estimated that
23 fewer than 100 farmed elk and no farmed deer have
24 died as a result of contracting CWD. The number of
25 farmed elk that have died is equivalent to less

1 than one-tenth of one percent of the current U.S.
2 farmed elk population estimated at 150,000.

3 It has other details. I was going to
4 use this to establish the risk level and if it was
5 necessary to mandate a CWD program. The CWD
6 program requires, among other things, that an
7 inventory validation inspection be conducted, that
8 records be submitted of all deaths, a notification
9 of all deaths is required, that the animals be
10 gathered and restrained for purposes of checking
11 for inventory validation. An intrastate movement
12 certificate is part of the CWD program to keep
13 track of the animals in case of trace-backs,
14 trace-forwards if they find CWD. In fact, the
15 entire argument that I have is about CWD, and the
16 hearing officer has denied me the opportunity to
17 make an argument.

18 THE HEARING OFFICER: Okay. Do you want to
19 submit Exhibit *-00K? We will include it as part
20 of the record even though I am gathering there is a
21 relevancy objection. I will have the same ruling
22 on that. These will be submitted for your record
23 for preserving your record on appeal, if we should
24 go there.

25 DR. RAMMELL: I would also like to have my

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1 annual cervidae assessment with my CWD status. I'd
2 like to offer it.

3 THE HEARING OFFICER: Exhibit *-00L?

4 MR. OAKLEY: Same objection.

5 DR. RAMMELL: As an offer of proof.

6 THE HEARING OFFICER: Do you want to look at
7 that?

8 MR. OAKLEY: There is really no relation to
9 any of the --

10 THE HEARING OFFICER: Same objection?

11 MR. OAKLEY: Yeah.

12 DR. RAMMELL: I'd like to offer all these
13 items, too.

14 THE HEARING OFFICER: Just a minute I want to
15 finish reviewing this.

16 Exhibit *-00L seems to relate to the
17 number of animals that were inventoried which does
18 seem to be relevant to this proceeding. States an
19 annual inspection inventory has been completed.

20 MR. OAKLEY: The state would stipulate to the
21 extent that it offers those numbers there, but
22 renews its objection as it relates to CWD status or
23 anything relating to chronic wasting disease.

24 THE HEARING OFFICER: Well, I can't separate
25 it. The document does talk about numbers and that

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Appendix 3:
Excerpts from Exhibit 3

Transcript of hearing before hearing officer – Vol. 3

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1 itself from the disease CWD when, in fact,
 2 Mr. Chatburn just testified that many of the rules
 3 in the current set of domestic cervidae rules are
 4 directly -- were directly implemented because of
 5 the CWD.
 6 CWD is a disease in a family of diseases
 7 called transmissible spongiform encephalopathies or
 8 TSEs. Bovine spongiform encephalopathy, or BSE,
 9 commonly known as mad cow disease is the most
 10 notorious of this family of diseases and has caused
 11 serious economic problems for the cattle industries
 12 in the United Kingdom, Japan, and recently Canada.
 13 A lesser notorious member of the family is scrapie,
 14 a TSE of sheep which causes severe itching and
 15 chronic weight loss which culminates in death.
 16 Scrapie has been found in sheep for
 17 decades. And even though it is a TSE, it has not
 18 received the attention like BSE because of its
 19 insidious nature. Scrapie has existed in the state
 20 of Idaho for many years and the United States since
 21 the late '50s. CWD, also a TSE, is thought to have
 22 existed since 1967 in cervidae. Although primarily
 23 a disease of mule deer and white tail deer, elk are
 24 also susceptible. CWD presents itself more like
 25 scrapie than BSE. Deer and elk become emaciated

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1 over time, show signs of a nervous disorder, and
 2 eventually die. The morbidity rate is low, but the
 3 mortality rate is high. Inappropriately referred
 4 to by the media as mad deer disease suggesting the
 5 same devastating effects as mad cow disease, CWD
 6 has drawn the emotion of wildlife protectionists
 7 throughout United States and Canada. The public
 8 pressure has resulted in extreme legislative
 9 oversight. The state of Idaho, in an overzealous
 10 attempt to prevent the spread of the disease, has
 11 instituted regulations that have the domestic
 12 cervidae industry on the brink of elimination.
 13 This oversight is where my concern lies. I believe
 14 in prevention, but do not agree that our basic
 15 rights to freedom need to be violated in the
 16 effort. Much like the controversial Patriot Act,
 17 the protection is needed, but not to the extent
 18 that our basic rights to freedom are lost.
 19 The center of my contention with the
 20 rules governing domestic cervidae is the rules that
 21 deal with the mandatory CWD surveillance program.
 22 Many of the rules that the state has alleged that I
 23 have violated are directly tied to CWD
 24 surveillance. The very use of the word "mandatory"
 25 implies freedom has been taken away. Under the

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1 mandatory program, all cervidae over the age of 16
 2 months which die must have brain samples submitted
 3 for CWD testing. All animals must be inventoried
 4 on a yearly basis. This includes a declaration of
 5 inventory report and inventory verification by
 6 state inspectors.
 7 A visual validation of animal
 8 identification is allowed at present as long as the
 9 individual animal identification is legible from a
 10 distance and matches past inventory records. In my
 11 case where visible identification from a distance
 12 interferes with my ability to market elk as hunting
 13 animals, I am required to run each animal through
 14 the chute so their individual identification can be
 15 validated using their USDA tags which are not
 16 visible from a distance. After the inventory is
 17 validated, all deaths recorded, and testing
 18 completed, providing no positives are found, the
 19 producer is then certified as CWD free for that
 20 year.
 21 In my case where my main market is
 22 hunters, I turn the elk loose on a large acreage in
 23 the mountains where trees and brush make finding an
 24 elk that dies, for whatever reason, nearly
 25 impossible. Many times we don't discover a death

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1 until weeks or months later when we accidentally
 2 find the remains. Testing of the brain requires a
 3 sample to be taken within hours when it is hot or
 4 when the days are temperate. Days or weeks destroy
 5 the samples depending on the weather. Sometimes
 6 animals are not even found leading to inventory
 7 validation problems. I have been testing the
 8 animals I have found in a timely manner for several
 9 years now and have yet to have a year where the
 10 ISDA has given me a certified free status for CWD.
 11 I have been submitting my inventories to
 12 the best of my ability. I have been forced to run
 13 elk through the chute to validate the inventory and
 14 in the process have wounded or killed several elk.
 15 I am forced into compliance with threat of fines,
 16 yet have received no direct benefit from the
 17 program.
 18 My recent question to Dr. Clarence
 19 Siroky, the state veterinarian over animal
 20 industries, was, why can't the elk ranchers be
 21 treated the same as the other livestock groups in
 22 Idaho, namely the sheep industry who actually have
 23 scrapie, yet their certification is voluntary. His
 24 answer was because of the highly emotional issues
 25 regarding CWD.

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1 THE HEARING OFFICER: You can answer.

2 THE WITNESS: Well, the TSEs are relatively
3 new in that we didn't understand what the cause of
4 some of these diseases were in earlier times. They
5 have been related to an abnormal protein that's
6 found in the brain of several different diseases.
7 I think they first identified it in human disease,
8 in the, I guess you'd call it, cannibals of an
9 island off the coast of Australia. Then they began
10 to look at other brain diseases of humans and
11 animals, and they discovered that scrapie was one
12 of those that had the same abnormal protein. And
13 they discovered it was transmissible in that you
14 could take it from one creature and give it to
15 another one. Same species type of thing. And
16 then, of course, everybody has been very familiar
17 with the bovine spongiform encephalopathy cases
18 that Great Britain and Europe have had. And one we
19 identified here last January -- I believe it was.
20 Maybe a year ago in December -- where cattle are
21 infected with this abnormal prion which they now
22 believe can be transferred to humans by the eating
23 of infected meat. Of course, we have known about
24 scrapie for a long time, but the chronic wasting
25 disease of deer and elk has been recently

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1 identified as belonging to this family of diseases
2 with this abnormal protein. And this abnormal
3 protein they have given the term prion. And it is
4 a protein which they can find in all these
5 diseases. And we use the same tests for these
6 diseases. Although we believe that most of these
7 diseases are specific for the species, we know that
8 BSE, for example, is transmissible to humans and
9 cats and from other animals. And the deer and elk
10 apparently can transmit their diseases back and
11 forth to each other.
12 And so there is some concern that all of
13 these diseases might be -- if a very unknown
14 quantity might be transmissible to humans under the
15 right circumstances.
16 Q. Dr. Bulgin, are you familiar with the
17 theory of how BSE was originated, mad cow disease?
18 A. The theory is that it coincided with the
19 changing of rendering processes in Great Britain.
20 They went from a process of where they took meats
21 and fats and so forth that were to be rendered into
22 another product that could be fed to animals. And
23 they had originally put it in a big vat of a very,
24 very strong alkali. It was heated up to a very
25 high temperature, and it was cooled off and taken

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1 out. That was called the all in, all-out process.
2 It was a fairly dangerous process, as I understand.
3 And it was changed to where they called it a
4 continuous flow process where the material would
5 flow into a tank of alkali and mix and flow out.
6 And the temperature wasn't quite as high, and they
7 didn't believe it reached as high temperatures, and
8 it wasn't in the alkali as long. And they think
9 that what happened is that scrapie, the sheep
10 protein, was sort of mutated, I suppose you could
11 say, in this new process. And instead of being
12 totally killed, it was now able to infect bovines.
13 And then, of course, there was a period of time
14 when nobody understood what was wrong with the
15 bovines, and they went into the rendering process
16 as well. And that process did not kill the BSE
17 protein. So that's the way they believe it got
18 started.
19 Q. Are you familiar with the theory of
20 how -- the leading theory how CWD was originated?
21 MR. OAKLEY: Objection.
22 THE HEARING OFFICER: There's an objection.
23 MR. OAKLEY: At this point the state would be
24 willing to stipulate that Dr. Bulgin is an expert
25 in scrapie, and that this foundational line of

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1 questioning is irrelevant and unnecessary.
2 THE HEARING OFFICER: Okay. They are
3 stipulating that she is an expert in scrapie.
4 DR. RAMMELL: Yes. I'd like to prove that
5 Dr. Bulgin has extensive knowledge about CWD, also.
6 THE HEARING OFFICER: Okay, I guess ask your
7 question.
8 Q. BY DR. RAMMELL: Dr. Bulgin, are you
9 familiar with the leading theory on where CWD came
10 from?
11 A. Well, I believe that the leading
12 theory -- and, again, I have to emphasize it's a
13 theory -- is it originated in Colorado where the
14 disease was first found in farmed animals or
15 animals that were captive that were held in
16 facilities that perhaps had been contaminated with
17 scrapie from sheep. And the thought is that they
18 picked up this organism from the environment, from
19 the scrapie contamination, and got into the captive
20 animals. Some of those escaped and thereby
21 spreading it to the population.
22 Q. Those animals that escaped, were they
23 deer or elk or --
24 MR. OAKLEY: Objection. I think it calls for
25 speculation. And, too, I guess I don't understand

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1 the basis for the testimony.

2 THE HEARING OFFICER: Okay. I'm going to
3 sustain without further foundation on how she has
4 this information.

5 Q. BY DR. RAMMELL: Dr. Bulgin, where have
6 you received your information?

7 A. Well, I have received this information
8 from a fellow by the name of Gene Schoonveld, who
9 was an animal scientist that was assigned to that
10 animal facility doing research at the time. And so
11 he was very well acquainted with the circumstances.

12 Q. Are you familiar with Dr. Beth Williams?

13 A. Yes, I am.

14 Q. Do you know her personally?

15 A. I do. And she was killed last night in
16 an automobile accident.

17 Q. Oh, I'm really sorry to hear that. I
18 knew her personally, too. Sorry to hear that.

19 A. Yeah.

20 Q. Is it true that Dr. Beth Williams was
21 considered the leading authority on CWD in the
22 United States?

23 A. She definitely was, yes.

24 Q. Are you familiar with her position on
25 the origination of CWD?

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1 MR. OAKLEY: Objection. Calls for speculation
2 and hearsay.

3 THE HEARING OFFICER: Well, I think experts
4 can testify based on treatises of the other
5 experts. And I understand there is a continuing
6 objection, anyway, to this witness testifying;
7 there is a relevance argument. But for purposes of
8 allowing him to make a record for potential appeal,
9 I will allow the question.

10 Q. BY DR. RAMMELL: Do you need the
11 question repeated to you?

12 A. As I understand it, it was Beth's
13 feeling, Dr. Williams feeling, that the scrapie
14 hypotheses was probably the best possible
15 hypotheses. You have to realize, we work on a
16 hypothesis until proven wrong. And so, you know, I
17 think that has a great deal of relevance because of
18 the fact that these are relatively little known
19 diseases. They are new diseases. There is a lot
20 of research coming in every day on these diseases.
21 And, you know, I think we need to assume the worst
22 until proven otherwise.

23 MR. OAKLEY: I just like to --

24 Q. BY DR. RAMMELL: Dr. Bulgin, is it your
25 expert opinion --

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1 THE HEARING OFFICER: Just a second. There
2 is an objection. There is an objection.

3 MR. OAKLEY: I'd like to add to the ongoing
4 objection for relevance that I believe that the
5 record should only reflect that type of evidence
6 which would be admissible. There is really no
7 basis up until -- on the record at all that CWD or
8 scrapie or any of the other diseases that are being
9 discussed is relevant or has any basis here in the
10 record. If we are moving on beyond foundational
11 issues, then we can address those as they come.
12 But I think that the record should be contained to
13 that evidence which would only be admissible
14 otherwise.

15 DR. RAMMELL: Ms. Uranga?

16 THE HEARING OFFICER: Yes.

17 DR. RAMMELL: I included in my testimony, not
18 only as the respondent, but I feel I have the
19 credentials to speak to disease also. I have got a
20 lot of -- I put into evidence in my testimony the
21 relationship between scrapie and CWD. And I have
22 personally seen elk with CWD. He says there is
23 nothing in evidence that would allow this line of
24 questioning. I just entered it.

25 MR. OAKLEY: Nothing has been alleged there

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1 has been any violations that relate to disease.
2 And my understanding of Idaho law is that evidence
3 is only admissible from an expert if it will assist
4 the trier of fact understand the evidence or
5 determine an issue in question. There is no
6 question of fact in regards to disease, and there
7 is no issue of disease alleged in the complaint.
8 So the law in Idaho says that this testimony is not
9 admissible into evidence. And I think that the
10 record should not contain inadmissible evidence.
11 It's not doing --

12 DR. RAMMELL: I belabored the point and
13 purposely made some redundancies in the record that
14 show from Mr. Chatburn's testimony that the rules
15 that I have allegedly violated were directly
16 related to the prevention and dissemination of
17 diseases among domestic cervidae. That's where
18 they claim their statutory authority is for those
19 rules. It's also evident from Mr. Chatburn's
20 testimony that CWD has influenced a number of
21 rules, including the ones that I have been alleged
22 to have violated. We have gone over and over and
23 over this, and there is definitely a relationship
24 between CWD, the rules that were implemented to
25 prevent its introduction and dissemination, and

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1 this case when I protested rules.
2 THE HEARING OFFICER: Okay.
3 DR. RAMMELL: I would like allow Dr. Bulgin
4 just a little bit more time to establish the
5 relationship between the various TSEs, and then I'd
6 like to ask her how the scrapie program -- how the
7 sheep industry in Idaho has reacted to the same
8 disease or very similar disease that is now
9 currently before the elk industry.
10 THE HEARING OFFICER: My ruling is her
11 testimony is irrelevant. There is no allegation
12 that any of your elk have CWD; however, I will
13 allow you to present testimony for purposes of your
14 defense or arguments on appeal.
15 DR. RAMMELL: Thank you, Ms. Uranga.
16 Q. BY DR. RAMMELL: I don't remember where
17 we were at. Dr. Bulgin, do you?
18 A. No, I don't.
19 Q. I asked you as an expert having dealt
20 with -- your responsibilities deal with elk and
21 deer brains, also, don't they?
22 A. Yes.
23 Q. At the Caine Teaching Center?
24 A. Yes.
25 Q. You've either personally analyzed brains

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1 for CWD or supervised for a number of years,
2 haven't you?
3 A. That's true.
4 Q. So my question is or was and is, as an
5 expert on scrapie and familiar with TSEs in
6 general, is it possible that scrapie is where CWD
7 came from?
8 A. I believe that everybody agrees it's
9 possible.
10 Q. Okay. Well, could you describe -- are
11 there any differences -- have you ever seen -- I
12 thought you testified that you actually had looked
13 at a brain from a cow that had BSE; is that true?
14 A. No, I have not personally looked at
15 known BSE slide.
16 Q. You probably haven't looked at a known
17 CWD brain, either, have you?
18 A. Other than the controls that we use in
19 our tests. We have to use positive controls.
20 Q. So you do know what a CWD infected brain
21 would look like?
22 A. Actually, they look very similar to
23 scrapie.
24 Q. That's the question that I wanted to get
25 to. On your tests, would there be any difference

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1 between a sheep infected with scrapie or an elk
2 infected with CWD?
3 A. Not on our tests, no.
4 Q. Could you note any differences at all in
5 the laboratory, not just on your test, but any
6 other tests you're aware of?
7 A. Well, the big difference is that elk
8 tend to have more of the prion in other centers of
9 the brain other than obex which is where we look
10 for it in sheep. Although that's the section we
11 like to look for it in elk, you're likely to find
12 it in other parts of the brain as well. So if your
13 sampling is maybe not as good as it should be, you
14 probably still have a good chance of finding it.
15 Q. Dr. Bulgin, could you please state your
16 involvement with the current scrapie program in
17 Idaho?
18 A. Well, I was on a committee appointed by
19 the Idaho Wool Growers to work with the state
20 Department of Animal Health, the Bureau of Animal
21 Health, to rewrite the state regulations on sheep
22 diseases and how to handle them because of the new
23 information we were getting from scrapie. We
24 wanted to make sure that we were able -- that the
25 state was able to put rules in place that would

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1 protect other wool growers and the industry as a
2 whole. And I think we did a pretty good job.
3 Those rules went in front of the legislators a
4 couple years ago. They were approved. They are
5 now being used by the state to regulate the disease
6 here.
7 Q. Who participated with you in designing
8 the current rule?
9 A. Dr. Phil Mamer who worked for the Bureau
10 of Animal Industries and Animal Health, he and I
11 were probably the two main people. We did probably
12 99 percent of the work.
13 Q. Wasn't Dr. Mamer also in charge of the
14 elk domestic cervidae program?
15 A. Yes, he was.
16 Q. So you guys were writing a program for
17 scrapie, and he was working on a program for CWD at
18 the same time; is that correct?
19 A. Yes, he was very active at that time
20 with the elk producers. And at the time, they were
21 putting in a voluntary program for testing.
22 Q. And then let me move onto the scrapie
23 program itself. Could you just briefly summarize
24 how the scrapie program in Idaho works?
25 A. Well, to begin with, there was no

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Appendix 4:
Excerpts from Exhibit 4

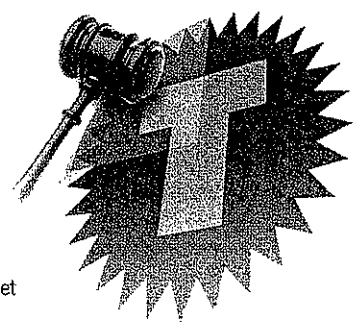
Transcript of hearing before deputy director

State of Idaho Department of Agriculture

IDAHO STATE DEPARTMENT OF)	Case No.
AGRICULTURE,)	M03-02-04-1130DC
)	
)	
vs.)	
)	
REX RAMMELL and LYNDIA)	Respondents.
RAMMELL, doing business as ELK)	
COUNTRY TROPHY BULLS,)	
)	
)	

BEFORE
MIKE EVERETT
Deputy director

Held on April 29, 2005
11:30 a.m.



Reported by
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<p>1 was to evaluate the evidence gathered in support of 2 the department's allegations that the respondents 3 have violated the domestic cervidae farms law and 4 the rules governing the domestic cervidae. 5 I think you will also find, in addition 6 to this, the record clearly supports that these 7 violations were committed by the respondents 8 intentionally and in bad faith. 9 In light of the fact the statutes and 10 rules are presumed valid and the proper forum is 11 available, and always has been available, to the 12 respondents to bring their challenge with respect 13 to the constitutionality and the reasonableness of 14 the statute and rules, the only conclusion that can 15 be drawn from the record is that the respondents 16 have simply acted without a reasonable basis in 17 fact and law. Simply stated, the respondents were 18 not required to violate the law to bring their 19 questions of constitutionality and reasonableness. 20 The record is adequate, the record is 21 fair, and I urge you to adopt the final order based 22 on the record as it now exists. 23 Thanks. 24 THE DEPUTY DIRECTOR: Thank you very much. 25 Dr. Rammell? By my record, you have 14</p>	<p>1 absolutely two different things. and I did 2 stipulate that the constitutionality of statute, 3 No. 1, couldn't be argued. But all of the rest of 4 the issues, including the reasonableness or the 5 reasonableness of them all, is clearly a legitimate 6 argument because 3704 in the domestic cervidae code 7 states that the director, or the agency, has 8 authority to make, promulgate, and enforce general 9 and reasonable rules not inconsistent with law. 10 They have to be general, No. 1, which a 11 number of them are not. You can't tell me that 12 staples every 12 inches is a general rule. That 13 rule is out. Reasonable rules? staples every 12 14 inches; that's a reasonable rule? It loses on both 15 general and reasonable. And then inconsistent with 16 law, they have to have statutory authority. 17 He says that the state has statutory 18 authority to come and run my elk through the chute. 19 There is nowhere in the statutes that they have 20 authority to come in and run my elk through the 21 chute just to do an inventory. They can argue it's 22 because of disease, but they won't make that 23 argument it's because of disease because, whenever 24 I brought up the issue of disease, they said it 25 wasn't relevant to the case, that CWD had no place</p>
Page 30	Page 32
<p>1 minutes. 2 DR. RAMMELL: Are you sure that's right? 3 THE DEPUTY DIRECTOR: Yes. 4 DR. RAMMELL: I was perfectly within my right 5 to protest these rules. It wasn't the venue they 6 favored. They'd rather have me try to sue the 7 state and win. I felt like my position was greater 8 as a defendant. They have been walking on my 9 property violating my rights for several years. I 10 am perfectly in my right to contest the rules that 11 way. 12 As far as me getting in the way, why 13 didn't the sheriff have me removed if I was in the 14 way? The deputy AG has a problem. No. 1, he 15 wasn't there; and No. 2, he stretched the truth on 16 a whole bunch of issues. He says that I submitted 17 the motion to disqualify in an untimely manner. He 18 submitted his motion in limine three weeks before 19 the hearing date. Tell me that's a whole bunch of 20 time to respond to. He says that the agency 21 doesn't necessarily have to review the rules, but 22 how -- I mean, that was the argument I had. That 23 was my argument. And he says the constitutionality 24 and review of the rules is the same thing, or at 25 least that's the way he sounds. They are</p>	<p>1 in this. That's why the rules were written. 2 This was a sham hearing. He got what he 3 wanted; he denied me my argument. Due process 4 allows me the right to a fair hearing. There is no 5 question I have grounds for appeal to the district 6 court. I mean, it's a no brainer. But I'll tell 7 you what I think will happen. It will go to the 8 district court, and it will get sent right back 9 down. He's going to say, "You didn't give him a 10 fair hearing." He needs to hear this stuff all 11 over again. He doesn't have enough on record. You 12 don't have enough on record to make a decision, let 13 alone the district judge. 14 He talked about my motion to disqualify 15 the judge was improper. It says that she has to 16 have professional knowledge on the subject matter, 17 not the law. I mean, you'd think that every one of 18 the hearing officers would have some knowledge on 19 the law, but they have to have knowledge of the 20 subject matter. She knows nothing about animals or 21 diseases. Zero. And she was asked to fairly 22 adjudicate this thing? I mean, you talk about a 23 poor hearing, this has got to be the biggest 24 mockery of our judicial system. What it does is, 25 it speaks to the unfairness of administrative</p>

Appendix 5:

IDAPA 02.04.19

Rules Governing Domestic Cervidae (2003)

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**IDAPA 02
TITLE 04
CHAPTER 19**

02.04.19 - RULES GOVERNING DOMESTIC CERVIDAE

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 25, Chapters 2, 3, 4, 6, and [37] 35, Idaho Code. (4-2-03)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is "Rules Governing Domestic Cervidae". (4-2-03)

02. Scope. These rules shall govern procedures for the detection, prevention, control and eradication of diseases among domestic cervidae, and facilities, record keeping, and reporting requirements of domestic cervidae ranches. The official citation of this chapter is IDAPA 02.04.19.000 et.seq. For example, this Section's citation is IDAPA 02.04.19.001. (4-2-03)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (4-2-03)

003. ADMINISTRATIVE APPEAL.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (4-2-03)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference and copies of these documents may be obtained from the Idaho State Department of Agriculture central office and the State Law Library. (4-2-03)

01. Bovine Tuberculosis Eradication, Uniform Methods and Rules, Effective January 22, 1999. (4-2-03)

02. Code Of Federal Regulations, Title 9, Part 161, January 1, 2002. (4-2-03)

03. Code Of Federal Regulations, Title 9, Part 55, February 5, 2002. (4-2-03)

04. Code Of Federal Regulations, Title 9, Subchapter A, Part 1 and 2, February 5, 2002. (4-2-03)

005. ADDRESS, OFFICE HOURS, TELEPHONE, AND FAX NUMBERS.

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-0790. (4-2-03)

02. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (4-2-03)

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. (4-2-03)

04. Telephone Number. The telephone number of the Division of Animal Industries at the central office is (208) 332-8540. (4-2-03)

05. Fax Number. The fax number of the Division of Animal Industries at the central office is (208) 334-4062. (4-2-03)

006. IDAHO PUBLIC RECORDS ACT.

These rules are public records and are available for inspection and copying at the ISDA central office and the State

Law Library. (4-2-03)

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Accredited Veterinarian. A veterinarian approved by the Administrator and USDA/APHIS/VS, in accordance with Title 9, Part 161, CFR, January 1, 2002, to perform functions required by cooperative state-federal animal disease control and eradication programs. (4-2-03)

02. Administrator. Administrator of the Division of Animal Industries or his designee. (4-2-03)

03. Approved Laboratory. NVSL, an AAVLD accredited laboratory that is qualified to perform CWD diagnostic procedures, or a laboratory designated by the Administrator to perform CWD diagnostic procedures. (4-2-03)

04. Approved Slaughter Establishment. A USDA inspected slaughter establishment at which ante-mortem and post-mortem inspection is conducted by USDA inspectors. (4-2-03)

05. Area Veterinarian In Charge. The USDA/APHIS/VS veterinary official who is assigned to supervise and perform official animal health activities in Idaho. (4-2-03)

06. Breed Associations And Registries. Organizations maintaining permanent records of ancestry or pedigrees of animals, individual animal identification records and records of ownership. (4-2-03)

07. Certificate. An official document issued by a state or federal animal health official or an accredited veterinarian at the point of origin of a shipment of cervidae, which contains information documenting the age, sex, species, individual identification of the animals, the number of animals, the purpose of the movement, the points of origin and destination, the consignor, the consignee, the status of the animals relative to official diseases, test results and any other information required by the state animal health official for importation or translocation. (4-2-03)

08. Cervid Herd. One (1) or more domestic cervidae or groups of domestic cervidae maintained on common ground or under common ownership or supervision that may be geographically separated but can have interchange or movement. (4-2-03)

09. Cervidae. Deer, elk, moose, caribou, reindeer, and related species and hybrids including all members of the cervidae family and hybrids. (4-2-03)

10. Chronic Wasting Disease. A transmissible spongiform encephalopathy of cervids, which is a nonfebrile, transmissible, insidious, and degenerative disease affecting the central nervous system of cervidae. (4-2-03)

11. Commingling. Within the last five (5) years, the animals have had direct contact with each other, had less than thirty (30) feet of physical separation, or shared management equipment, pasture, or surface water sources, except for periods of less than forty-eight (48) hours at sales or auctions when a state or federal animal health official has determined such contact presents minimal risk of CWD transmission. (4-2-03)

12. Custom Exempt Slaughter Establishment. A slaughter establishment that is subject to facility inspection by USDA, but which does not have ante-mortem and post-mortem inspection of animals by USDA inspectors. (4-2-03)

13. CWD-Adjacent Herd. A herd of domestic cervidae occupying premises that border a premise occupied by a CWD positive herd, including herds separated by roads or streams. (4-2-03)

14. CWD-Exposed Animal. A cervid animal that is not exhibiting any signs of CWD, but has had contact within the last five (5) years with cervids from a CWD-positive herd or the animal is a member of a CWD-exposed herd. (4-2-03)

15. **CWD-Exposed Herd.** A herd of cervidae in which no animals are exhibiting signs of CWD, but: (4-2-03)
- a. An epidemiological investigation indicates that contact with CWD positive animals or contact with animals from a CWD positive herd has occurred in the previous five (5) years; or (4-2-03)
 - b. A herd of cervidae occupying premises that were previously occupied by a CWD positive herd within the past five (5) years as determined by the designated epidemiologist; or (4-2-03)
 - c. Two (2) herds that are maintained on a single premise even if they are managed separately, have no commingling, and have separate herd records. (4-2-03)
16. **CWD-Positive Cervid.** A domestic cervid on which a diagnosis of CWD has been confirmed through positive test results on any official cervid CWD test by an approved laboratory. (4-2-03)
17. **CWD-Positive Herd.** A domestic cervidae herd in which any animal(s) has been diagnosed with CWD, based on positive laboratory results, from an approved laboratory. (4-2-03)
18. **CWD-Suspect Cervid.** A domestic cervid for which laboratory evidence or clinical signs suggests a diagnosis of CWD. (4-2-03)
19. **CWD-Suspect Herd.** A domestic cervidae herd in which any animal(s) has been determined to be a CWD-suspect. (4-2-03)
20. **Department.** The Idaho State Department of Agriculture. (4-2-03)
21. **Death Certificate.** A form provided by the Division for the reporting of cervidae deaths and for reporting sample submission for CWD testing. (4-2-03)
22. **Designated Epidemiologist.** A state or federal veterinarian who has demonstrated the knowledge and ability to perform the functions required under these rules and who has been selected by the Administrator to fulfill the epidemiology duties relative to the state domestic cervidae disease control program. (4-2-03)
23. **Director.** The Director of the Idaho State Department of Agriculture, or his designee. (4-2-03)
24. **Disposal.** Final disposition of dead cervidae. (4-2-03)
25. **Division.** Idaho State Department of Agriculture, Division of Animal Industries. (4-2-03)
26. **Domestic Cervidae.** Fallow deer (*Dama dama*), elk (*Cervus elaphus*) or reindeer (*Rangifer tarandus*) owned by a person. (4-2-03)
27. **Domestic Cervidae Approved Feedlot.** A domestic cervidae ranch, which is a confined dry-lot area, where selected domestic cervidae can be secured and isolated from all other domestic and wild cervidae and livestock for the purpose of feeding for slaughter only with no provisions for grazing. (4-2-03)
28. **Domestic Cervidae Ranch.** A premise where domestic cervidae are held or kept, including multiple premises under common ownership. (4-2-03)
29. **Escape.** Any domestic cervidae located outside the perimeter fence of a domestic cervidae ranch and not under the immediate control of the owner or operator of the domestic cervidae ranch. (4-2-03)
30. **Federal Animal Health Official.** An employee of USDA, APHIS, VS who is authorized to perform animal health activities. (4-2-03)
31. **Herd Of Origin.** A cervid herd, on any domestic cervidae ranch or other premise, where the

animals were born, or where they were kept for at least one (1) year prior to date of shipment. (4-2-03)

32. **Herd Status.** Classification of a cervidae herd with regard to CWD. (4-2-03)

33. **Intrastate Movement Certificate.** A form approved by the Administrator, and available from the Division, to document the movement of domestic cervidae between premises within Idaho. (4-2-03)

34. **Individual Herd Plan.** A written herd management agreement and testing plan developed by the herd owner and approved by the Administrator to identify and eradicate CWD from a positive, source, suspect, exposed, or adjacent herd. (4-2-03)

35. **Limited Contact.** Incidental contact between animals of different herds in separate pens off of the herd's premises at fairs, shows, exhibitions and sales. (4-2-03)

36. **Official CWD Test.** A test approved by the Administrator and conducted at an approved laboratory to diagnose CWD. (4-2-03)

37. **Official Identification.** Identification, approved by the Administrator, that individually, uniquely, and permanently identifies each cervid. (4-2-03)

38. **Operator.** A person who has authority to manage or direct a domestic cervidae ranch. (4-2-03)

39. **Owner.** The person that has legal title to, or has financial control of, any domestic cervidae or domestic cervidae ranch (4-2-03)

40. **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (4-2-03)

41. **Premises.** The ground, area, buildings, and equipment utilized to raise, propagate, control, or harvest domestic cervidae. (4-2-03)

42. **Quarantine.** An order issued on authority of the Administrator, by a state or federal animal health official or accredited veterinarian, prohibiting movement of cervids from any location without a written restricted movement permit. (4-2-03)

43. **Quarantine Facility.** A confined area where selected domestic cervidae can be secured and isolated from all other cervidae and livestock. (4-2-03)

44. **Reidentification.** The identification of a domestic cervid which had been officially identified, as provided by this chapter, but which has lost the official identification device, or the tattoo or official identification device has become illegible. (4-2-03)

45. **Restrain.** The immobilization of domestic cervidae in a chute, other device, or by other means for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. (4-2-03)

46. **Restricted Movement Permit.** An official document that is issued by the Administrator, AVIC, or an accredited veterinarian for movement of animals from positive, suspect, or exposed herds. (4-2-03)

47. **Source Herd.** A herd from which at least one (1) cervid has originated within the previous five (5) years and that cervid has been diagnosed CWD positive. (4-2-03)

48. **State Animal Health Official.** The Administrator, or his designee. (4-2-03)

49. **Status Date.** The date on which the Administrator approves in writing a herd status change with regard to CWD. (4-2-03)

50. Trace Back Herd. An exposed herd in which at least one (1) CWD positive animal resided within any of the previous sixty (60) months prior to diagnosis with CWD. (4-2-03)

51. Trace Forward Herd. A herd that has received exposed animals from a positive herd within sixty (60) months prior to the diagnosis of CWD in the positive herd or from the identified point of entry of CWD into the positive herd. (4-2-03)

52. Traceback. The process of identifying the movements and the herd of origin of CWD positive, or exposed animals, including herds that were sold for slaughter. (4-2-03)

53. Wild Cervidae. Any cervid animal not owned by a person. (4-2-03)

011. ABBREVIATIONS.

01. AAVLD. American Association of Veterinary Laboratory Diagnosticians. (4-2-03)

02. APHIS. Animal Plant Health Inspection Service. (4-2-03)

03. AVIC. Area Veterinarian in Charge. (4-2-03)

04. AZA. American Zoological Association. (4-2-03)

05. CFR. Code of Federal Regulations. (4-2-03)

06. CWD. Chronic Wasting Disease. (4-2-03)

07. CWDP. Chronic Wasting Disease Program. (4-2-03)

08. ISDA. Idaho State Department of Agriculture. (4-2-03)

09. NAEBA. North American Elk Breeders Association. (4-2-03)

10. NVSL. National Veterinary Services Laboratory. (4-2-03)

11. TB. Tuberculosis. (4-2-03)

12. UM&R. Uniform Methods and Rules. (4-2-03)

13. USDA. United States Department of Agriculture. (4-2-03)

14. VS. Veterinary Services. (4-2-03)

012. APPLICABILITY.

These rules apply to all domestic cervidae located in, imported into, exported from, or transported through the state of Idaho. (4-2-03)

013. AZA ACCREDITED FACILITIES AND USDA LICENSED FACILITIES.

AZA accredited facilities and facilities licensed by USDA under 9CFR Subchapter A Parts 1 and 2 as licensees, dealers, exhibitors, research facilities and zoos are exempt from the provisions of this chapter provided that: (4-2-03)

01. Movement Between AZA And USDA Facilities. AZA accredited and USDA licensed facilities shall not sell, give, or in any way transfer cervidae to persons or domestic cervidae ranches within Idaho, except other to AZA accredited or USDA licensed facilities. (4-2-03)

02. Transfer Of Cervidae. Any AZA accredited or USDA licensed facility that in any way transfers cervidae, or title to cervidae, to any person in Idaho, except to other AZA accredited or USDA licensed facilities,

shall comply with all of the provisions of this chapter. (4-2-03)

014. IMPORTATION OF DOMESTIC CERVIDAE.

All domestic cervidae imported into the state of Idaho shall comply with the requirements of IDAPA 02.04.21 "Rules Governing the Importation of Animals," which apply to domestic cervidae. (4-2-03)

015. -- 019. (RESERVED).

020. LOCATION OF DOMESTIC CERVIDAE.

Any person who owns or has control of domestic cervidae in Idaho which are not located on a domestic cervidae ranch, which is in compliance with the applicable provisions of this chapter, or on an AZA accredited or USDA licensed facility in compliance with this chapter, is in violation of these rules. (4-2-03)

01. Department Action. In addition to any other administrative or civil action, the department may seize, require removal from the state, require removal to a domestic cervidae ranch that is in compliance with the provisions of this chapter, or require disposal of any domestic cervidae that are not located on a domestic cervidae ranch, an AZA accredited facility, or a USDA licensed facility which is in compliance with the provisions of this chapter. (4-2-03)

02. Reindeer. Reindeer shall not be owned, possessed, propagated or held in Idaho north of the Salmon River in order to protect the wild caribou herd in northern Idaho. (4-2-03)

03. Exceptions. The Administrator may grant exceptions from the provisions of Section 020 on a case specific basis. (4-2-03)

04. Natural Disasters. Damage caused to domestic cervidae ranch facilities by natural disasters shall not constitute a violation of this chapter, provided that the owner or operator begins any necessary repairs immediately upon discovering the damage, acts expeditiously, as determined by the Administrator, to complete any necessary repairs and reports the extent and cause of any damage to the Division within twenty-four (24) hours of the occurrence of the damage. (4-2-03)

021. OFFICIAL IDENTIFICATION.

All domestic cervidae shall be individually, permanently, and uniquely identified, with two (2) types of official identification approved by the Administrator. (4-2-03)

01. Reporting Of Identification. The unique individual identification number, type of identification, and the name, address, and telephone number of the owner of each animal identified shall be reported to the Administrator, in writing, by the owner or operator. (4-2-03)

02. Identification Assigned. Official identification, once assigned to an individual animal, shall not be changed or transferred to another animal. Animals that lose identification devices shall be reidentified in accordance with Section 023. (4-2-03)

03. Progeny. All progeny of domestic cervidae shall be officially identified by December thirty-first of the year of birth, upon sale or transfer of ownership, or upon leaving the domestic cervidae ranch, whichever is earlier. (4-2-03)

022. TYPES OF OFFICIAL IDENTIFICATION.

All domestic cervidae shall be individually identified by two (2) of the following types of official identification. (4-2-03)

01. Official USDA Eartag. (4-2-03)

02. Tattoo. Legible skin tattoo using an alphanumeric tattoo sequence that has been recorded with the Division of Animal Industries. The tattoo shall be applied either ear or escutcheon. (4-2-03)

03. Microchip. A microchip approved by the Administrator, in cooperation with the Idaho Brand

Department, with an identifying number/frequency that has been recorded with the division. The owner of the domestic cervidae shall provide the microchip reader. (4-2-03)

04. Official NAEBA Eartag. (4-2-03)

05. Official ISDA Cervidae Program Eartag. A tamper resistant, unique number sequenced, individual identification tag approved by the Administrator. (4-2-03)

06. Official HASCO Brass Lamb Tag. This brass lamb tag shall be engraved with farm name and individual animal identification number. (4-2-03)

023. REIDENTIFICATION OF DOMESTIC CERVIDAE.

No domestic cervidae that were marked with official identification shall be re-tattooed for the purpose of reestablishing their identification nor shall any domestic cervidae be re-ear-tagged with an official identification eartag at any time subsequent to the original identification, except that re-tattooing or re-ear-tagging for the purpose of reestablishing the official identification shall be allowed under the following conditions: (4-2-03)

01. Supervision. Reidentification shall be accomplished under the supervision of an accredited veterinarian, or state or federal animal health officials. (4-2-03)

02. Permanent Identification. Animals that are presented for reidentification shall have some permanent identification which will identify the animals as those originally officially identified such as an individual animal registration tattoo, or other approved permanent identification, provided that such identification was submitted on the annual inventory report or other official record. (4-2-03)

03. Inventory Evaluation. In absence of permanent identification, the Administrator may conduct an investigation or inventory evaluation to determine identity of the animal that is being presented for reidentification. (4-2-03)

04. Reproduction Of Original Tattoo. Re-tattooing shall reproduce the original tattoo, which was placed in the animal's ear at the time of official identification. (4-2-03)

05. Records. The accredited veterinarian, or state or federal animal health official, who supervises the reidentification shall correlate the new identification with previous identification and record the eartag or other identification numbers, the tattoo symbols and the owner's name and address and submit the reidentification record to the Division within ten (10) days of the date of reidentification. (4-2-03)

024. INSPECTIONS.

To prevent the introduction and dissemination, or to control and eradicate diseases, state and federal animal health officials are authorized to inspect cervidae records, premises, facilities, and domestic cervidae to ensure compliance with the provisions of this chapter and other state or federal laws or rules applicable to domestic cervidae. (4-2-03)

025. GENETICS.

Domestic cervidae that have red deer genetic influence shall not be imported into Idaho. Additionally, any domestic cervidae located in Idaho that are identified as having red deer genetic influence shall be destroyed, removed from the state, or neutered. (4-2-03)

026. WILD CERVIDAE.

Wild cervidae shall not be confined, kept or held on a domestic cervidae ranch. (4-2-03)

01. Duty Of Ranch Owner. It shall be the duty of owners of all domestic cervidae ranches to take precautions, and to conduct periodic inspections, to ensure that wild cervidae are not located within the perimeter fence of any domestic cervidae ranch. (4-2-03)

02. Notification Of Administrator. All owners or operators of domestic cervidae ranches shall notify the Administrator within twenty-four (24) hours of gaining knowledge of the presence of wild cervidae inside the perimeter fence of the domestic cervidae ranch. (4-2-03)

03. Failure To Notify The Administrator. The failure of any owner or operator of a domestic cervidae ranch to notify the Administrator of the presence of wild cervidae within the perimeter fence of a domestic cervidae ranch is a violation of this chapter. (4-2-03)

04. Idaho Department Of Fish And Game. Upon receiving notification that wild cervidae are on a domestic cervidae ranch the Administrator shall notify the Idaho Department of Fish and Game. (4-2-03)

027. SUPERVISION OF DOMESTIC CERVIDAE PROGRAM.

A department veterinary medical officer shall provide routine supervision of the domestic cervidae program. (4-2-03)

028. DISPOSAL OF DOMESTIC CERVIDAE.

All domestic cervidae carcasses and parts of carcasses not utilized for human consumption, except parts of carcasses utilized for taxidermy purposes, shall be disposed of in compliance with IDAPA 02.04.17, "Rules Governing Dead Animal Movement And Disposal". (4-2-03)

029. FEES.

01. Domestic Cervidae Ranches. A fee, not to exceed five dollars (\$5) per head on elk or three dollars (\$3) per head on fallow deer and reindeer, is to be assessed on all domestic cervidae in the state to cover the cost of administering the program covered in these rules. This fee is due January first of each year. (4-2-03)

02. Domestic Cervidae Approved Feedlots. A fee of five dollars (\$5) per head on elk and three dollars (\$3) per head on fallow deer and reindeer, shall be paid on all cervidae entering domestic cervidae approved feedlots to cover the cost of administering the program covered in these rules. This fee is due January first of each year. (4-2-03)

030. -- 099. (RESERVED).

100. DOMESTIC CERVIDAE RANCHES.

In order to prevent the introduction or dissemination of diseases, and to control or eradicate diseases, all domestic cervidae ranches shall comply with the disease control, facility, and record keeping requirements and all other provisions of this chapter. (4-2-03)

01. Each Premise. Each separate premise where domestic cervidae are kept or held shall comply with all of the provisions of this chapter. (4-2-03)

02. Vehicle Access. Domestic cervidae ranches shall have motorized vehicle access to the restraining system on each premise, during the portion of the year that cervidae are held or kept on the premise, adequate to facilitate disease prevention and control as determined by the Administrator. (4-2-03)

101. DOMESTIC CERVIDAE RANCH FACILITY REQUIREMENTS.

All domestic cervidae ranches are required to have facilities, including but not limited to perimeter fence, restraining system, gathering system, water system, and if required, a quarantine facility. (4-2-03)

01. Maintenance. All facilities shall be maintained, at all times that domestic cervidae are present, to prevent the escape of domestic cervidae or ingress of wild cervidae. (4-2-03)

02. Inspections. To ensure compliance with this chapter, state or federal animal health officials shall inspect all premises where domestic cervidae are, or will be, possessed, controlled, harvested, propagated, held, or kept. (4-2-03)

a. Each domestic cervidae ranch shall be inspected at least annually. (4-2-03)

b. All facilities relating to the handling or raising of domestic cervidae shall be inspected. (4-2-03)

102. PERIMETER FENCE REQUIREMENTS.

A perimeter fence, completely enclosing the domestic cervidae ranch shall be constructed of high-tensile, non-slip woven wire or other fencing material approved by the Administrator. (4-2-03)

01. Elk And Fallow Deer. For elk and fallow deer, the fence shall be a minimum of eight (8) feet in height for its entire length at all times. (4-2-03)

02. Reindeer. For reindeer, the fence shall be at least six (6) feet in height for its entire length at all times. (4-2-03)

03. Wire. The top two (2) feet of each fence may be smooth, barbed or woven wire (at least twelve and one-half (12-1/2) gauge) with horizontal strands spaced not more than six (6) inches apart. (4-2-03)

a. Wire shall be placed on the animal side of the fence to prevent pushing the wire away from the posts. (4-2-03)

b. Wire shall be attached to all posts at the top, bottom, and not more than twelve (12) inches apart between the top and bottom of the wire. (4-2-03)

04. Posts. Posts used in the perimeter fence shall be at least butt-end treated with a commercially available preservative and have a minimum of four (4) inch top for line posts and a minimum of five (5) inch top for corner posts. Posts shall be spaced no more than twenty-four (24) feet apart, with stays, supports or braces as needed, and be placed in the ground a minimum of three (3) feet. (4-2-03)

05. Gates. Each domestic cervidae ranch shall have gates that prohibit the escape of domestic cervidae or the ingress of wild cervidae. (4-2-03)

06. Fence Maintenance. Fences shall be maintained, at all times that domestic cervidae are present, to prevent domestic cervidae from escaping or native wild cervidae from entering the enclosure. (4-2-03)

07. Exceptions. The Administrator may grant exceptions to the specifications in Section 102 on a case specific basis. (4-2-03)

103. GATHERING AND RESTRAINING SYSTEM.

Each domestic cervidae ranch shall have a system for humanely and effectively gathering and restraining domestic cervidae for the purpose of inspecting, identifying, treating, or testing of animals by state or federal animal health officials. (4-2-03)

01. Gathering System. Each domestic cervidae ranch shall have a system that facilitates the gathering of domestic cervidae so as to be able to move the domestic cervidae through the restraining system, at any time of the year that domestic cervidae are present. (4-2-03)

02. Restraining System. A system approved by the Administrator, to immobilize domestic cervidae for the purpose of efficient, effective, and safe handling for inspecting, treating, vaccinating, or testing. (4-2-03)

03. Exceptions. The Administrator may grant exceptions to the provisions of this section on a case specific basis. (4-2-03)

104. WATER SYSTEM.

Each domestic cervidae ranch shall have a water system adequate to supply the need of the cervidae herd. (4-2-03)

105. QUARANTINE FACILITY.

If animals are to be imported onto the domestic cervidae ranch, a quarantine facility, approved by the Administrator, shall be provided for holding animals until any disease retesting is accomplished or other requirements are met. (4-2-03)

106. -- 199. (RESERVED).

200. RECORDS AND REPORTING.

01. Reports. Owners of domestic cervidae ranches shall submit complete and accurate reports to the Administrator. Failure to submit complete and accurate reports within the designated time frames is a violation of this chapter. (4-2-03)

02. Records. All owners of domestic cervidae ranches shall, during normal business hours, present to state or federal animal health officials, for inspection, review, or copying, any cervidae records deemed necessary to ensure compliance with the provisions of this chapter. (4-2-03)

03. Notification. State or federal animal health officials shall attempt to notify the owners or operators of domestic cervidae ranches, and premises where records are kept prior to any inspections. (4-2-03)

04. Emergencies. In the event of an emergency, as determined by the Administrator, the notification requirements of Section 200 may be waived. (4-2-03)

201. ANNUAL INVENTORY REPORT.

01. Inventory Report. All owners of domestic cervidae ranches shall annually submit, to the Administrator, a complete and accurate inventory of all animals held no later than December 31st of each year, on a form approved by the Administrator. The annual inventory report shall contain the following minimum information: (4-2-03)

- a. Name and address of the domestic cervidae ranch. (4-2-03)
- b. Name and address of the owner of the domestic cervidae ranch. (4-2-03)
- c. Date the inventory was completed. (4-2-03)

02. Individual Domestic Cervidae. For each individual domestic cervidae that was located on the domestic cervidae ranch during the year for which the report is being made, the following information shall be provided: (4-2-03)

- a. All types of official and unofficial identification; (4-2-03)
- b. Species; (4-2-03)
- c. Sex; (4-2-03)
- d. Age or year born; (4-2-03)
- e. Disposition, including the date of sale, death, or purchase; and (4-2-03)
- f. Name and address of the owner of the domestic cervidae. (4-2-03)

202. INVENTORY VERIFICATION.

State or federal animal health officials shall verify all domestic cervidae ranch inventories of animals held and individual animal identification annually. (4-2-03)

01. Bangle Tag. Individual animal identification verification may be accomplished by visually noting the bangle tag or other readily visible identification on each animal so long as this identification is correlated with two (2) forms of official identification on the inventory report and permanent domestic cervidae ranch records. (4-2-03)

02. Duty To Gather And Restrain. It shall be the duty of the owner of each domestic cervidae ranch to gather and restrain any domestic cervidae, which state or federal animal health officials determine are not readily identifiable, for inventory verification purposes. The Administrator shall determine the suitability of the restraint

system. (4-2-03)

203. CHANGE OF ADDRESS.

Owners of domestic cervidae ranches shall notify the Division, within thirty (30) days, of any change in the address of the owners of domestic cervidae, the owner of the domestic cervidae ranch, or the domestic cervidae ranch. (4-2-03)

204. ESCAPE OF DOMESTIC CERVIDAE.

When any domestic cervidae escape from a domestic cervidae ranch, the owner or operator of the domestic cervidae ranch shall notify the Administrator within twenty-four (24) hours of the escape. (4-2-03)

01. Duty To Retrieve Escaped Cervidae. It shall be the duty of each owner or operator of a domestic cervidae ranch to retrieve or otherwise bring under control all domestic cervidae that escape from a domestic cervidae ranch. (4-2-03)

02. Fish And Game. The Administrator shall notify the Idaho Department of Fish and Game of each escape. (4-2-03)

03. Sheriff And State Brand Inspector. When domestic cervidae escape from a domestic cervidae ranch and the owner or operator is unable to retrieve the animals within twenty-four (24) hours, the Administrator may notify the county sheriff or the state brand inspector of the escape pursuant to Title 25, Chapter 23, Idaho Code. (4-2-03)

04. Capture. In the event that the owner or operator of a domestic cervidae ranch is unable to retrieve escaped domestic cervidae in a timely manner, as determined by the Administrator, the Administrator may effectuate the capture of the escaped domestic cervidae to ensure the health of Idaho's livestock and wild cervidae populations. (4-2-03)

05. Failure To Notify. Failure of any owner or operator of a domestic cervidae ranch to notify the Administrator within twenty-four (24) hours of the escape of domestic cervidae is a violation of this chapter. (4-2-03)

205. NOTICE OF DEATH OF DOMESTIC CERVIDAE.

The death of a domestic cervidae over one (1) year of age shall be reported by the owner or operator to the division by telephone, electronic mail, or facsimile transmission of a CWD sample submission form/death certificate: (4-2-03)

01. Domestic Cervidae Ranches. The owner or operator of a domestic cervidae ranch shall notify the division within five (5) business days of when the owner or operator knew or reasonably should have known of the death. (4-2-03)

02. Approved And Custom Exempt Slaughter Establishments. The owners of cervidae that are slaughtered shall report the death within five (5) business days of the date that the cervidae was slaughtered. (4-2-03)

206. CWD SAMPLE SUBMISSION FORM/DEATH CERTIFICATE.

The owner or operator of a domestic cervidae ranch shall submit, to the Administrator, a complete and accurate copy of all CWD sample submission forms/death certificates at the same time that CWD samples are submitted to an approved laboratory. (4-2-03)

207. NOTIFICATION OF EXPOSURE TO DISEASE.

Any owner, operator, veterinarian practicing in Idaho, laboratory conducting cervidae testing, or any other person who has reason to believe that domestic cervidae are exposed to or infected with a dangerous or reportable disease or parasite shall notify the Division immediately. (4-2-03)

208. INTRASTATE MOVEMENT CERTIFICATE.

All owners of domestic cervidae ranches who move cervidae, from one premise to another, within the state of Idaho shall submit, to the Administrator, a complete and accurate intrastate movement certificate signed by the consignor,

within five (5) business days of the movement. The Administrator shall provide blank intrastate movement certificates to the owners of domestic cervidae ranches upon request. (4-2-03)

209. -- 249. (RESERVED).

250. INTRASTATE MOVEMENT OF DOMESTIC CERVIDAE.

All live domestic cervidae moving from one premise to another premise within the state of Idaho shall be officially identified, except calves during the year of birth accompanying their dam, and accompanied by: (4-2-03)

01. TB Test. An official negative test for tuberculosis of all cervidae over twelve (12) months of age, conducted within the last ninety (90) days, or written permission from the Administrator, except: (4-2-03)

a. Animals originating from an accredited, qualified or monitored herd, as described in "Bovine Tuberculosis Eradication, Uniform Methods and Rules", effective January 22, 1999, if they are accompanied by a certificate signed by an accredited veterinarian or the Administrator stating such domestic cervidae have originated directly from such herd; or (4-2-03)

b. Those domestic cervidae consigned directly to an approved slaughter establishment or domestic cervidae approved feedlot; or (4-2-03)

c. Those domestic cervidae moving from one premise to another premise owned by the same person. (4-2-03)

02. Intrastate Movement Certificate. All intrastate movements of live domestic cervidae shall be accompanied by a complete and accurate intrastate movement certificate, which has been signed by the owner or operator of the domestic cervidae ranch where the movement originates and includes a statement of the CWD and TB status of the cervidae. (4-2-03)

03. Movement Of Cervidae Between Accredited AZA Or USDA Licensed Facilities. Movement of cervidae between accredited AZA and USDA licensed facilities is exempt from the requirements of this chapter. All other movement from AZA accredited or USDA licensed facilities shall comply fully with all of the provisions of this chapter. (4-2-03)

251. -- 299. (RESERVED).

300. DISEASE CONTROL.

The Administrator may require domestic cervidae in the state to be tested for brucellosis (*Brucella abortus* or *Brucella suis*), tuberculosis (*Mycobacterium bovis*), meningeal worm (*Parelaphostrongylus tenuis*), muscle worm (*Elaphostrongylus cervus*), CWD or for other diseases or parasites determined to pose a risk to other domestic cervidae, livestock, or wildlife. (4-2-03)

301. DUTY TO RESTRAIN.

It shall be the duty of the owner of each domestic cervidae ranch to gather and restrain domestic cervidae for testing when directed to do so in writing by the Administrator. The Administrator shall determine the suitability of the restraint system. (4-2-03)

302. TESTING METHODS.

The Administrator shall determine appropriate testing procedures and methods. (4-2-03)

303. TESTING, TREATMENT, QUARANTINE, OR DISPOSAL REQUIRED.

The Administrator shall determine when testing, treatment, quarantine, or disposal of domestic cervidae is required at any domestic cervidae ranch pursuant to Title 25, Chapters 2, 3, 4, 6 and [37] 35, Idaho Code. If the Administrator determines that testing, treatment, quarantine, disposal of domestic cervidae, or cleaning or disinfection of premises is required, a written order shall be issued to the owner describing the procedure to be followed and the time period for carrying out such actions. (4-2-03)

304. QUARANTINES.

All domestic cervidae animals or herds that are determined to be exposed to, or infected with, any disease that constitutes an emergency, as provided in Title 25, Chapter 2, Idaho Code, shall be quarantined. (4-2-03)

01. Infected Herds. Infected herds or animals shall remain under quarantine until such time that the herd has been completely depopulated and the premise has been cleaned and disinfected as provided by the Administrator, or the provisions for release of a quarantine established in these rules have been met. (4-2-03)

02. Exposed Herds. The quarantine for exposed herds or animals may take the form of a hold-order which shall remain in effect until the exposed animals have been tested and the provisions for release of a quarantine as established in these rules have been met. (4-2-03)

03. Validity Of Quarantine. The quarantine shall be valid whether or not acknowledged by signature of the owner. (4-2-03)

305. DECLARATION OF ANIMAL HEALTH EMERGENCY.
The Director is authorized to declare an animal health emergency. (4-2-03)

01. Condemnation Of Animals. In the event that the Director determines that an emergency exists, animals that are found to be infected, or affected with, or exposed to an animal health emergency disease may be condemned and destroyed. (4-2-03)

02. Indemnity. Any indemnity shall be paid in accordance with Sections 25-212 and 25-213, Idaho Code. (4-2-03)

03. Notification To Administrator. Every owner of cervidae, every breeder or dealer in cervidae, every veterinarian, and anyone bringing cervidae into this state who observes the appearance of, or signs of any disease or diseases, or who has knowledge of exposure of the cervidae to diseases that constitute an emergency shall give immediate notice, by telephone or facsimile to the Administrator. (4-2-03)

04. Failure To Notify. Any owner of cervidae who fails to report as herein provided shall forfeit all claims for indemnity for animals condemned and slaughtered or destroyed on account of the animal health emergency. (4-2-03)

306. -- 399. (RESERVED).

400. BRUCELLOSIS.
Owners of domestic cervidae ranches shall comply with IDAPA 02.04.20, "Rules Governing Brucellosis," that apply to domestic cervidae. (4-2-03)

401. -- 449. (RESERVED).

450. TUBERCULOSIS.

01. Change Of Ownership. All domestic cervidae that are sold, or are in any way transferred from one person to another person in Idaho are required to be tested negative for TB within ninety (90) days prior to the change of ownership or transfer, except: (4-2-03)

a. Animals originating from an accredited, qualified or monitored herd, as described in "Bovine Tuberculosis Eradication, Uniform Methods and Rules," effective January 22, 1999, if they are accompanied by a certificate signed by an accredited veterinarian or the Administrator stating such domestic cervidae have originated directly from such herd; or (4-2-03)

b. Those domestic cervidae consigned directly to an approved slaughter establishment or domestic cervidae approved feedlot. (4-2-03)

02. Rules And UM&R. Owners of domestic cervidae ranches shall comply with IDAPA 02.04.03, "Rules of the Department of Agriculture Governing Animal Industry," that apply to domestic cervidae, and the

Bovine Tuberculosis Eradication, UM&R, Effective January 22, 1999.

(4-2-03)

451. -- 499. (RESERVED).

500. SURVEILLANCE FOR CWD.

01. Slaughter Surveillance. Brain or other tissues, from one hundred percent (100%) of all domestic cervidae sixteen (16) months of age or older that are slaughtered at approved slaughter establishments or custom exempt slaughter establishments, shall be submitted, by the owner of the slaughtered cervidae, to official laboratories to be tested or examined for CWD as provided for in these rules. (4-2-03)

02. Domestic Cervidae Ranch Surveillance. Brain or other tissues, from one hundred percent (100%) of all domestic cervidae sixteen (16) months of age or older that die, are slaughtered, or harvested by hunting on domestic cervidae ranches shall be submitted, by the owner or operator of the domestic cervidae ranch, to official laboratories to be tested or examined for CWD, as provided for in these rules, except Reindeer and fallow deer unless the Reindeer or fallow deer are part of a CWD positive, exposed, trace, source or suspect herd or part of an elk herd. (4-2-03)

501. COLLECTION OF SAMPLES FOR CWD TESTING.

Only accredited veterinarians, state and federal animal health officials, and other persons, approved by the Administrator, shall collect brain or other tissue samples for CWD testing. Samples shall be collected immediately upon discovery of the death of a domestic cervid. (4-2-03)

01. Brain Samples. Persons trained by state or federal animal health officials, and approved by the Administrator, may remove the brain stem containing the obex portion for submission as the sample for CWD testing. (4-2-03)

02. Submission Of Head. Persons trained by state or federal animal health officials, and approved by the Administrator, may submit a head with the official identification attached to the head as the sample for CWD testing. (4-2-03)

03. Handling Of Samples. All CWD samples shall be handled in a manner that prevents degradation of the sample. (4-2-03)

04. Sample Submission Time. Fresh samples for CWD testing shall be submitted, to an approved laboratory, within seventy-two (72) hours of the date of collection. Formalin preserved samples shall be submitted, to an approved laboratory, within five (5) business days of the date of collection. (4-2-03)

05. Non-Testable Or Samples That Do Not Contain Appropriate Tissues. The Administrator may conduct an investigation to determine if a domestic cervidae ranch is complying with the provisions of Section 500 if: (4-2-03)

a. The owner or operator of a domestic cervidae ranch submits samples for CWD testing which are non-testable; or (4-2-03)

b. The owner or operator of a domestic cervidae ranch submits samples for CWD testing that do not contain appropriate tissues for CWD testing. (4-2-03)

06. Failure To Submit Samples For CWD Testing. An owner or operator of a domestic cervidae ranch that fails to submit samples for CWD testing as required in this chapter is in violation of these rules, except the Administrator may approve, in writing, a variance from sample submission requirements on a case specific basis. (4-2-03)

502. OFFICIAL CWD TESTS.

01. Official Tests. Official tests for CWD, approved by the Administrator, include: (4-2-03)

- a. Histopathology; (4-2-03)
- b. Immunohistochemistry; (4-2-03)
- c. Western Blot; (4-2-03)
- d. Negative Stain Electron Microscopy; (4-2-03)
- e. Bioassay; and (4-2-03)

02. Other Scientifically Validated Test. The Administrator may approve other scientifically validated laboratory or diagnostic tests to confirm a diagnosis of CWD. (4-2-03)

503. CWD STATUS.

CWD status shall be based on the number of years that a herd of domestic cervidae has been determined to be in compliance with the provisions of this chapter, during which there is no evidence of CWD in the herd. (4-2-03)

01. Status Review. The Administrator shall review the CWD status of each domestic cervidae herd located in Idaho on at least an annual basis. (4-2-03)

02. Status Date. The status date is the date that the Administrator approves a change in the CWD status of a domestic cervidae herd in Idaho. (4-2-03)

03. Cervidae Of Lesser Status. If a herd of domestic cervidae has contact with cervidae of a lesser status, the status of the herd with the higher status shall be lowered to the status of the cervidae with the lesser status. (4-2-03)

04. Change Of Ownership. A herd's status may remain with the herd when a change of ownership, management or premises occurs, if there is no contact with cervidae of lesser status, and no previous history of CWD on the premises. (4-2-03)

05. Contact With CWD Positive Animals. Any herd of domestic cervidae that has contact with CWD positive or exposed animals may have its status reduced or removed. (4-2-03)

504. INVESTIGATION OF CWD.

An epidemiological investigation shall be conducted on all CWD positive, suspect, and exposed animals and herds, herds of origin, source herds, all adjacent herds, and all trace herds as determined by the Administrator. (4-2-03)

01. Quarantine. All positive, suspect, and exposed herds or animals, herds of origin, adjacent herds, and herds having contact with positive or exposed animals shall be quarantined; and (4-2-03)

02. Identification. CWD suspect and exposed animals shall be identified and remain on the premises where they are found until they have met the provisions for release of quarantine established in this chapter, are destroyed and disposed of as directed by the Administrator, or are moved at the Administrator's direction on a restricted movement permit. (4-2-03)

505. DURATION OF CWD QUARANTINE.

Quarantines imposed because of CWD in accordance with this chapter shall remain in effect until one (1) of the following criteria are met: (4-2-03)

01. CWD Positive Herds. The quarantine may be released after the herd is completely depopulated as provided in Subsection 505.07, or after five (5) years of compliance with an individual herd plan and all provisions of these rules, during which there was no evidence of CWD. (4-2-03)

02. CWD Suspect Herds. The quarantine may be released after the herd is completely depopulated as provided in Subsection 505.07, or after a minimum of five (5) years of compliance with an individual herd plan and all provisions of these rules and during which there was no evidence of CWD, or an epidemiologic investigation

determines that there is no evidence CWD exists in the herd as determined by the Administrator. (4-2-03)

03. Source Herds And Herds Of Origin. The quarantine may be released after a minimum of five (5) years of compliance with an individual herd plan and all provisions of these rules and during which there was no evidence of CWD, or an epidemiologic investigation determines that there is no evidence CWD exists in the herd and that the herd is not the source of infection as determined by the Administrator. (4-2-03)

04. Exposed Herds. The quarantine may be released after the herd is completely depopulated as provided in Subsection 505.07, or after a minimum of five (5) years of compliance with an individual herd plan and all provisions of these rules and during which there was no evidence of CWD, or an epidemiologic investigation determines that there is no evidence CWD exists in the herd as determined by the Administrator. (4-2-03)

05. Adjacent Herds. As directed by the Administrator based upon an epidemiological investigation and in consultation with the designated epidemiologist. (4-2-03)

06. Fencing Requirements. Any owner of a domestic cervidae ranch who chooses to remain under quarantine for five (5) years shall construct a second perimeter fence that meets the requirements for perimeter fence, as provided in Section 102, such that no domestic cervidae on the domestic cervidae ranch can get within ten (10) feet of the original exterior perimeter fence or as approved by the Administrator. (4-2-03)

07. Complete Depopulation. The quarantine may be released after: (4-2-03)

a. Complete depopulation of all cervidae on the premises as directed by the Administrator; and (4-2-03)

b. The premises have been free of all livestock as specified in an individual herd plan approved by the Administrator; and (4-2-03)

c. The soil and facilities have been cleaned, treated, decontaminated, or disinfected as directed by the Administrator. (4-2-03)

08. Disposal Of Positive Or Exposed Cervidae. All CWD positive or exposed domestic cervidae shall be disposed of as directed by the Administrator. (4-2-03)

506. CLEANING, TREATING, DECONTAMINATING, OR DISINFECTING. Premises shall be cleaned, treated, decontaminated, or disinfected under state or federal supervision as directed by the Administrator within fifteen (15) days after CWD positive or suspect animals have been removed. (4-2-03)

01. Exemptions. The Administrator may authorize, in writing, an exemption from cleaning, treating, decontaminating, or disinfection requirements on a case-by-case basis. (4-2-03)

02. Extension Of Time. The Administrator may authorize, in writing, an extension of time for cleaning and disinfection under extenuating circumstances. (4-2-03)

03. Requests For Extensions or Exemptions. The owner of the contaminated facility shall submit requests for extensions or exemptions to the Administrator in writing. (4-2-03)

507. -- 599. (RESERVED).

600. DOMESTIC CERVIDAE APPROVED FEEDLOTS. Domestic cervidae may be fed for slaughter in an Idaho Domestic Cervidae Approved Feedlot for a time period of up to six (6) months, except for domestic cervidae calves born in the feedlot. (4-2-03)

01. Grazing. No Domestic Cervidae Approved Feedlot shall permit pasturing or grazing. (4-2-03)

02. Maintain All Original Identification. All original animal identification devices shall be maintained and records of new identification devices shall show original identification and disposition. These records

shall be maintained for three (3) years following disposition of the domestic cervidae for animal health tracing purposes. (4-2-03)

03. All Cervidae Shall Be Separated By Sex. All cervidae on the facility shall be penned separately by sex so that no breeding can occur. (4-2-03)

04. Pregnant Female Cervidae Allowed To Calve. Female cervidae, which are pregnant at the time of entry into the feedlot, may be allowed to calve in the feedlot. All calves may remain in the feedlot up to sixteen (16) months of age prior to moving to an approved slaughter establishment. (4-2-03)

05. All Cervidae Leaving The Facility. All cervidae leaving the facility shall move only to slaughter at an approved slaughter establishment. (4-2-03)

06. Escapes. All domestic cervidae that escape from a Domestic Cervidae Approved Feedlot shall immediately be destroyed. (4-2-03)

07. Domestic Cervidae Deaths. All deaths of domestic cervidae shall be reported, by the owner or operator of the domestic cervidae feedlot, to the Administrator within twenty-four (24) hours of the death. (4-2-03)

08. CWD Testing. The owner or operator of the domestic cervidae feedlot shall collect and submit tissue samples for CWD testing in accordance with Section 501 for all cervidae that enter the feedlot. (4-2-03)

09. Notification Of Disease. Every owner or operator of a Domestic Cervidae Approved Feedlot that observes the appearance of, or signs of any disease or diseases, or who has knowledge of exposure of the cervidae to diseases that constitute an emergency shall give immediate notice, by telephone or facsimile to the Administrator. (4-2-03)

601. APPLICATION FOR DOMESTIC CERVIDAE APPROVED FEEDLOT.

Application for Domestic Cervidae Approved Feedlot status shall be made on application forms available from the Administrator. (4-2-03)

602. ADMINISTRATOR APPROVAL.

The Administrator may approve Domestic Cervidae Approved Feedlot Applications after the domestic cervidae feedlot has been inspected by state or federal animal health officials and meets all requirements for a Domestic Cervidae Approved Feedlot as described in this Section: (4-2-03)

01. Cervidae Secured. The feedlot management has demonstrated that domestic cervidae can be secured in the feedlot and the feedlot has met the facility requirements in Section 603; and (4-2-03)

02. Adequate Records. Domestic Cervidae Approved Feedlot records are adequate to show the origin and disposition of the domestic cervidae in the feedlot; and (4-2-03)

03. Adequate Resources. The Administrator determines that the Division of Animal Industries has adequate personnel and fiscal resources to assure that the feedlot abides by the provisions of this Chapter; and (4-2-03)

04. Past History. The Administrator may take past enforcement or violation history into consideration when making the final determination of whether or not to approve a feedlot. (4-2-03)

603. DOMESTIC CERVIDAE APPROVED FEEDLOT REQUIREMENTS.

All Domestic Cervidae Approved Feedlots shall comply with the facility requirements for domestic cervidae ranches in this Chapter, and the following: (4-2-03)

01. Perimeter Fence. A double perimeter fence, constructed in accordance with Section 102, with a minimum of thirty (30) feet of separation between the perimeter fences. (4-2-03)

02. Interior Fence. All interior fences shall have a visual barrier such that domestic cervidae cannot

see the exterior fence. (4-2-03)

03. Access To Live Water. There can be no access to live surface water by the animals in the facility. (4-2-03)

04. Prohibited In Areas With Resident Or Migratory Wild Cervidae Herds. Domestic Cervidae Approved Feedlots are not allowed in areas with preexisting wild cervidae herds during any part of the year as determined by the Administrator. (4-2-03)

05. Geographically Separate From Any Other Domestic Cervidae Ranch Or Other Livestock Facility. Domestic Cervidae Approved Feedlots are to be geographically separated from any other domestic cervidae ranch or other livestock facility as determined by the Administrator. (4-2-03)

06. Waste Containment. All manure, runoff and wastewater shall be contained on the facility in a manner approved by the Administrator. (4-2-03)

604. DOMESTIC CERVIDAE APPROVED FEEDLOT NUMBER.
Feedlots approved by the Administrator shall receive a Domestic Cervidae Approved Feedlot Number. (4-2-03)

605. EXPIRATION OF APPROVED STATUS.
Approved domestic cervidae feedlot status shall expire on September 1 of each year. It shall be the responsibility of feedlot management to apply each year for renewal of approved status. (4-2-03)

606. CONTENT OF RECORDS FOR DOMESTIC CERVIDAE APPROVED FEEDLOTS.
All domestic cervidae approved feedlots shall keep accurate and complete records of all cervidae in the feedlot. These records shall readily show: (4-2-03)

01. Animals Received. The number, species, age, sex, origin, date of entry, individual identification, and final disposition of all cervidae received at the feedlot. (4-2-03)

02. Animals Removed From Feedlot. The date of removal or sale, and destination of any animals removed. (4-2-03)

03. Death Loss. That the deaths of all cervidae have been accurately recorded. (4-2-03)

04. Requirements. That all applicable permit, test, examination, identification, and vaccination requirements have been met. (4-2-03)

607. RECORDS RETENTION.
Feedlot records shall be retained by the feedlot for a period of not less than three (3) years following removal of the cervidae from the feedlot. (4-2-03)

608. ENTRY REQUIREMENTS.
Idaho Domestic Cervidae Approved Feedlots are allowed to feed all classes of cervidae, which are not known to be exposed to brucellosis, tuberculosis, or CWD, except that no cervidae from a CWD endemic area, as determined by the Administrator, shall be imported into a Domestic Cervidae Approved Feedlot. (4-2-03)

609. DOMESTIC CERVIDAE APPROVED FEEDLOT CLOSURE.
Domestic Cervidae Approved Feedlot owners may close the facility by shipping all domestic cervidae to slaughter at an approved slaughter establishment. (4-2-03)

01. Records. Feedlot records shall be retained by the feedlot owner for a period of not less than three (3) years following removal of the cervidae from the feedlot, or transferred to the Division. (4-2-03)

02. Repopulation Of Facility. The Administrator shall determine the method and timeframes for repopulation of the facility with domestic cervidae or other livestock, and any required cleaning and decontamination. (4-2-03)

610. -- 619. (RESERVED).

620. INSPECTION.

The feedlot premises, the domestic cervidae therein, and the feedlot records shall be presented for inspection, during normal business hours, to the Administrator. (4-2-03)

621. REVOCATION OF APPROVED FEEDLOT STATUS.

The Administrator may revoke approved feedlot status by notifying the owner in writing. (4-2-03)

01. Failure To Comply. In addition to any other department administrative or civil action, failure on the part of the feedlot operator to comply with the requirements of this chapter shall result in revocation of the Idaho Domestic Cervidae Approved Feedlot status. (4-2-03)

02. Operator Request. Operators may have the approved feedlot status revoked by emptying the feedlot and requesting in writing that the status be revoked. (4-2-03)

03. Regulation Changes. Idaho Domestic Cervidae Approved Feedlot status may be revoked at such time as revocation is required by changes in state or federal rules or regulations. (4-2-03)

04. Disposition Of Domestic Cervidae. Should the Idaho Domestic Cervidae Approved Feedlot status be revoked, domestic cervidae still in the feedlot shall be removed from the feedlot as provided in Section 600 of this chapter. The Administrator shall have the authority to impose time limits for removal of domestic cervidae. (4-2-03)

622. -- 989. (RESERVED).

990. PENALTY FOR VIOLATIONS.

Any person violating any of the provisions of this Chapter shall be subject to the penalty provisions of Title 25, Chapters 2, 3, 4, 6, and [35] 37, Idaho Code, applicable to domestic cervidae. (4-2-03)

01. Monetary Penalties. The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other matters as justice requires. (4-2-03)

02. Minor Violations. Nothing in this Chapter shall be construed as requiring the director to report minor violations when the director believes that the public interest will be best served by suitable warnings or other administrative action. (4-2-03)

991. -- 999. (RESERVED).

